

EXHIBIT D

In The Matter of:

REESE, ET AL.

vs.

CNH GLOBAL N.V. and CNH AMERICA, LLC

MARK L. LYNNE

January 17, 2014

M E R R I L L L A D

1325 G Street NW, Suite 200, Washington, DC
Phone: 800.292.4789 Fax: 202.861.3425

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

- - - - -X

JACK REESE, et al., :

Plaintiffs, : Case No.

vs. : 2:04-cv-70592-PJD-PJK

CNH GLOBAL N.V. and CNH :

AMERICA LLC, :

Defendant. :

- - - - -X

Deposition of MARK L. LYNNE

Baltimore, Maryland

Friday, January 17, 2014

9:39 a.m.

Job No. 1-243549

Pages: 1 - 197

Reported by: Dana C. Ryan, RPR, CRR

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5	100 Light Street	5	
6	9th Floor	6	
7	Baltimore, Maryland 21202	7	EXHIBITS
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9	Southfield, Michigan 48034	9	Titled Spending Patterns
10	Telephone: (248) 354-9650	10	For Prescription Drugs Under
11	Email: dbault@michworklaw.com	11	Medicare Part D
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16	McDermott Will & Emery	16	International Employee Group
17	500 North Capitol Street, Northwest	17	Insurance Plan For Hourly
18	Washington, D.C. 20001	18	Employees Of CNH America LLC
19	Telephone: (202) 756-8000	19	Who Retired After July 1,
20	Email: jrogaczewski@mwe.com	20	1994 And Before May 1, 2005,
21		21	UAW, Summary Plan
22		22	Description

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<p style="text-align: right;">Page 10</p> <p>1 PROCEEDINGS</p> <p>2 MARK L. LYNNE,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>5 BY MR. ROGACZEWSKI:</p> <p>6 Q Good morning. Can you state and spell</p> <p>7 your name for the record?</p> <p>8 A Mark, M-A-R-K, Lynne, L-Y-N-N-E.</p> <p>9 Q Mr. Lynne, do you have a middle name?</p> <p>10 A Lanterman, L-A-N-T-E-R-M-A-N.</p> <p>11 Q Are you feeling well today, Mr. Lynne?</p> <p>12 A Well, my voice isn't up to scratch,</p> <p>13 but...</p> <p>14 Q Are you taking any medication for</p> <p>15 what's bothering your throat?</p> <p>16 A I did take DayQuil this morning.</p> <p>17 Q Do you believe taking DayQuil will</p> <p>18 affect your ability to give testimony today?</p> <p>19 A No.</p> <p>20 Q Have you taken any prescription</p> <p>21 medication in the last 24 hours?</p> <p>22 A No.</p>	<p style="text-align: right;">Page 12</p> <p>1 agreed to appear at your office instead at</p> <p>2 9:30 this morning?</p> <p>3 A Yes.</p> <p>4 Q And you understand that you're</p> <p>5 answering questions today under oath?</p> <p>6 A Yes.</p> <p>7 Q Because your testimony is being</p> <p>8 recorded, you should not interrupt or try to speak</p> <p>9 over myself or -- or Ms. Brault.</p> <p>10 Do you understand?</p> <p>11 A Yes.</p> <p>12 Q And I will try not to do the same.</p> <p>13 For similar reasons, you must provide</p> <p>14 verbal responses; nodding your head, shaking your</p> <p>15 led or saying things like uh-huh or huh-uh won't</p> <p>16 do.</p> <p>17 Do you understand?</p> <p>18 A Yes.</p> <p>19 Q If you want a break, please let me</p> <p>20 know. The only thing I ask is that if there is a</p> <p>21 question pending that you answer it before</p> <p>22 breaking.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q Have you taken any other</p> <p>2 nonprescription medication in the last 24 hours?</p> <p>3 A Other than that, no.</p> <p>4 (Lynne Deposition Exhibit 1 was marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MR. ROGACZEWSKI:</p> <p>8 Q Mr. Lynne, you've been handed what's</p> <p>9 been marked as Exhibit 1. It is called a subpoena</p> <p>10 to testify at a deposition in a civil action,</p> <p>11 dated December 13, 2013.</p> <p>12 Do you recognize this document?</p> <p>13 A Yes.</p> <p>14 Q Have you seen it before?</p> <p>15 A Yes.</p> <p>16 Q What is this document?</p> <p>17 A It's a subpoena that I was served.</p> <p>18 Q And do you understand that you were</p> <p>19 required to be present at my office at 8:00 a.m.</p> <p>20 this morning to answer questions under oath?</p> <p>21 A Yes.</p> <p>22 Q And do you further understand that you</p>	<p style="text-align: right;">Page 13</p> <p>1 Do you understand?</p> <p>2 A Yes.</p> <p>3 Q And, finally, if you do not understand</p> <p>4 a question, please let me know, and I'll do my</p> <p>5 best to give you a question that is more</p> <p>6 comprehensible to you. It's important for me to</p> <p>7 have a clear record.</p> <p>8 Do you understand?</p> <p>9 A Yes.</p> <p>10 Q Have you been deposed before?</p> <p>11 A No.</p> <p>12 Q Have you testified at a hearing or</p> <p>13 trial before?</p> <p>14 A I've testified in an arbitration.</p> <p>15 Q Have you testified at any other</p> <p>16 hearings or trials?</p> <p>17 A No.</p> <p>18 Q At how many arbitrations have you</p> <p>19 testified?</p> <p>20 A One.</p> <p>21 Q What was the subject matter of the</p> <p>22 arbitration in which you were deposed -- I'm</p>

4 (Pages 10 to 13)

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1 sorry, in which you testified?

2 A My client, the Howard County, Maryland,
3 School System had a contract with a -- a dental
4 provider for their employee benefits, and there
5 was a dispute as to when they could terminate that
6 contract.

7 Q Did you testify as a fact witness in
8 the arbitration?

9 A Yes.

10 Q You didn't testify as an expert witness
11 in the arbitration?

12 A I honestly don't recall whether it was
13 fact or expert. This was some years ago.

14 Q How long ago was it?

15 A I believe it was seven or eight years
16 ago.

17 Q Do you recall providing an expert
18 report like you did in this case in that
19 arbitration?

20 A No.

21 Q Was the UAW involved in that
22 arbitration matter?

Page 15

1 A No.

2 Q Was Case Corporation involved in that
3 matter?

4 A No.

5 Q Was Case, LLC involved in that matter?

6 A No.

7 Q Was CNH America, LLC involved in that
8 matter?

9 A No.

10 Q Was Fiat involved in that matter?

11 A No.

12 Q Was CNH Global N.V. involved in that
13 matter?

14 A No.

15 Q Did the matter involve anyone who is a
16 plaintiff in this case?

17 A No.

18 Q Did the matter involve retiree health
19 benefits?

20 A No.

21 (Lynne Deposition Exhibit 2 was marked
22 for identification and attached to the

Page 16

1 transcript.)

2 BY MR. ROGACZEWSKI:

3 Q Mr. Lynne, you've been handed what's
4 been marked as Exhibit 2. It is a subpoena to
5 produce documents, information or objects or
6 permit inspection at the premises in a civil
7 action. It's dated December 13th, 2013.

8 Do you recognize this document?

9 A Yes.

10 Q Have you seen this before?

11 A Yes.

12 Q What is this document?

13 A It is a subpoena I received.

14 Q How did you receive it?

15 A I was served here in this office.

16 Q If I could direct you to page 2, the
17 affidavit of service is -- you were served on
18 December 17th personally in these offices;
19 correct?

20 A That sounds like the right date.

21 Q You don't disagree with --

22 A No.

Page 17

1 Q You don't disagree -- you don't
2 actively disagree with it?

3 A No.

4 Q There is an attachment with a series of
5 document requests. Do you see those?

6 A Are you referring to pages 3 and 4?

7 Q Of the attachment, correct.

8 A Yes. Yes, I see them.

9 Q Do you understand that this subpoena
10 required you to produce documents that satisfied
11 or were responsive to those requests?

12 A Yes.

13 Q Did you, in fact, produce documents
14 responsive to these requests?

15 MS. BRAULT: I'm just going to state
16 for the record we did produce documents responsive
17 to this request and also that we submitted
18 objections to some of the requests, but I believe
19 all the documents were produced.

20 BY MR. ROGACZEWSKI:

21 Q I'll take the answer.

22 A Yes.

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1 Q Thank you.</p> <p>2 What documents were produced?</p> <p>3 A I produced a rebuttal expert report and</p> <p>4 other documents that I relied upon for that report</p> <p>5 and other documents that I received but may not</p> <p>6 have relied upon.</p> <p>7 Q What do you mean by that?</p> <p>8 A There were -- there were some documents</p> <p>9 that I opened, reviewed briefly but did not -- did</p> <p>10 not factor into my report.</p> <p>11 Q To your knowledge, are you withholding</p> <p>12 any documents that were responsive --</p> <p>13 A No.</p> <p>14 Q -- to the request?</p> <p>15 A No.</p> <p>16 (Lynne Deposition Exhibit 3 was marked</p> <p>17 for identification and attached to the</p> <p>18 transcript.)</p> <p>19 BY MR. ROGACZEWSKI:</p> <p>20 Q Mr. Lynne, you've been handed what's</p> <p>21 been marked as Exhibit 3. It's another subpoena</p> <p>22 to produce documents, information or objects or to</p>	<p style="text-align: right;">Page 20</p> <p>1 Q Did you, in fact, produce documents</p> <p>2 responsive to the request?</p> <p>3 A No.</p> <p>4 Q Are you withholding any documents that</p> <p>5 are responsive to the request?</p> <p>6 A (Witness reviews document.)</p> <p>7 MS. BRAULT: I'm going to just state</p> <p>8 again that we did file objections, so to the</p> <p>9 extent that asserting an objection is -- your term</p> <p>10 was "withholding" documents, then to the extent</p> <p>11 that any documents are being withheld they're</p> <p>12 being withheld by counsel subject to the</p> <p>13 objection, not the witness.</p> <p>14 BY MR. ROGACZEWSKI:</p> <p>15 Q I'll take the answer.</p> <p>16 A I would agree with that.</p> <p>17 Q Are there documents responsive to the</p> <p>18 request?</p> <p>19 A Yes.</p> <p>20 MR. ROGACZEWSKI: Let me ask,</p> <p>21 Ms. Brault, are plaintiffs planning to withdraw</p> <p>22 the analogous request to CNH's experts.</p>
<p style="text-align: right;">Page 19</p> <p>1 permit inspection at the premises in a civil</p> <p>2 action. This one is dated December 30, 2013.</p> <p>3 Do you recognize this document?</p> <p>4 A Yes.</p> <p>5 Q Have you seen it before?</p> <p>6 A Yes.</p> <p>7 Q What is this document?</p> <p>8 A It's a subpoena that was served to me.</p> <p>9 Q Okay. And there is an attachment with</p> <p>10 the document request. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q You understand this subpoena required</p> <p>13 you to produce documents that satisfied the</p> <p>14 request?</p> <p>15 A Yes.</p> <p>16 MS. BRAULT: I'm going to just state</p> <p>17 for the record that we also filed an objection to</p> <p>18 this subpoena as untimely and overly broad. I</p> <p>19 don't think that Mr. Lynne actively participated</p> <p>20 in any of the response to that -- to this</p> <p>21 subpoena.</p> <p>22 BY MR. ROGACZEWSKI:</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. BRAULT: No. Mr. Lynne is not a</p> <p>2 registered lobbyist.</p> <p>3 BY MR. ROGACZEWSKI:</p> <p>4 Q Mr. Lynne, where do you live?</p> <p>5 A I live in Monkton, Maryland.</p> <p>6 Q What is your address there?</p> <p>7 A 2097 Corbett, C-O-R-B-E-T-T, Road.</p> <p>8 Q And could you spell the name of the</p> <p>9 city again?</p> <p>10 A M-O-N-K-T-O-N.</p> <p>11 Q And that's in Maryland?</p> <p>12 A Yes.</p> <p>13 Q How long have you lived there?</p> <p>14 A Since 1989.</p> <p>15 Q And when were you born, Mr. Lynne?</p> <p>16 A March 30, 1958.</p> <p>17 Q And where were you born?</p> <p>18 A Baltimore, Maryland.</p> <p>19 Q Have you lived in Baltimore your entire</p> <p>20 life?</p> <p>21 A In -- in the area, yes.</p> <p>22 Q Where did you attend secondary school?</p>

6 (Pages 18 to 21)

Page 22

1 A Towson High School.

2 Q And when did you complete your
3 education at Towson High School?

4 A 1976.

5 Q And you graduated from Loyola College
6 in 1980 as a bachelor of arts in economics;
7 correct?

8 A Correct.

9 Q When did you enroll in Loyola?

10 A Fall of 1976.

11 Q Did you attend any colleges other than
12 Loyola?

13 A No.

14 Q Have you attended any other classes
15 since completing your education at Loyola?

16 A I completed the designation called the
17 Certified Employee Benefits Specialist, which
18 required taking ten courses and passing tests, and
19 then also completed a follow-on designation called
20 a Fellow of the Certified Employee Benefits
21 Specialist program.

22 Q What additional requirements did you

Page 23

1 have to fill to be a fellow?

2 It was in 1995; correct?

3 A Yes. It was taking an additional
4 course and a test.

5 Q One additional course?

6 A Yes.

7 Q Now, CEBS allows you to have a
8 specialization in addition to being a certified
9 employee benefits specialist; correct?

10 A It -- it's the primary designation for
11 consultants in this field.

12 Q Can you have an additional designation
13 within -- within the field of employee benefits
14 such as -- or -- or are you simply a CEBS?

15 A I'm a CEBS.

16 Q Okay. Any coursework besides from what
17 you've done in connection with becoming a CEBS or
18 a -- and a fellow?

19 A No.

20 Q Were any of the classes that you took
21 for the -- well, let me ask it this way. What
22 were the courses that you had to take to become a

Page 24

1 CEBS?

2 A I don't remember all of them, but they
3 were -- they had to do with different kinds of
4 employee benefits, health insurance, life,
5 disability, different retirement plans,
6 administration of employee benefits, human
7 resources.

8 Q Any of the classes touch on labor law?

9 A I don't recall that there was one that
10 was specifically on labor law, but -- I don't
11 recall the extent to which they -- they would have
12 done that.

13 Q What about the course that you
14 completed to become a fellow? What was that
15 course?

16 A It was additional -- additional study
17 in the employee benefits field and updated current
18 information for what was happening in the benefits
19 field.

20 Q Does your field have any continuing
21 education requirements?

22 A It does to be a -- to be an insurance

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1 broker, which I am, also.

2 Q What sort of things do you have to do
3 on a regular basis to be an insurance broker?

4 A You have to take 16 credits every --
5 within a two-year period.

6 Q Do those credits have to be in any
7 particular areas?

8 A There are -- there are certain courses
9 that are -- that are sanctioned by the Maryland
10 Insurance Administration that you can take.

11 Q Just as an example, what is the last
12 course that you took -- or the last three courses
13 that you've taken in connection with your
14 insurance brokers license?

15 A One was about fraud in -- in benefit
16 plans; one was about requirements for privacy,
17 HIPAA.

18 Q Then the third?

19 A I don't recall the third.

20 Q Okay. You said fraud in benefit plans,
21 and fraud by whom in connection with benefit
22 plans?

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 A Could be fraud by policyholder, by --</p> <p>2 by company.</p> <p>3 Q So either side of the insurance</p> <p>4 relationship?</p> <p>5 A Right.</p> <p>6 Q Have any of your insurance broker</p> <p>7 courses addressed issues associated with labor</p> <p>8 law?</p> <p>9 A I don't recall that they did.</p> <p>10 Q You work currently at Bolton Partners;</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q And you've worked here since 1993;</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q Your second stint --</p> <p>17 A Yes.</p> <p>18 Q -- at Bolton Partners?</p> <p>19 You concentrate on health care clients</p> <p>20 and governmental entities; correct?</p> <p>21 A Governmental entities and jointly</p> <p>22 trusted multi-employer plans.</p>	<p style="text-align: right;">Page 28</p> <p>1 if -- when you say "global," do you mean</p> <p>2 operations overseas?</p> <p>3 Q That's the intent of the question, yes.</p> <p>4 A No.</p> <p>5 Q One of your clients is the Middletown</p> <p>6 Works Hourly and Salaried Union Retiree Health</p> <p>7 Fund; correct?</p> <p>8 A Correct.</p> <p>9 Q And that's a VEBA fund; right?</p> <p>10 A Correct.</p> <p>11 Q How many health plans are paid for out</p> <p>12 of the Middletown Works fund?</p> <p>13 A I -- I don't --</p> <p>14 Q That's fair. You work in this field.</p> <p>15 I don't.</p> <p>16 A Right.</p> <p>17 Q VEBA funds are not the same as the</p> <p>18 health benefit plan; correct?</p> <p>19 A No, they're -- they have a different</p> <p>20 structure -- different structure, management</p> <p>21 structure.</p> <p>22 Q I mean, the VEBA fund might, by trust</p>
<p style="text-align: right;">Page 27</p> <p>1 Q And I'm not asking for an identity of</p> <p>2 your clients. How would you describe your clients</p> <p>3 generally?</p> <p>4 A They are -- they range in size from,</p> <p>5 say, 300 participants to I think 60,000</p> <p>6 participants. They are typically self-insured</p> <p>7 health plans. They have other benefits besides</p> <p>8 health: life, disability, dental, vision.</p> <p>9 Q Are your clients the plans or the plan</p> <p>10 sponsors?</p> <p>11 A With the multi-employer plans, they are</p> <p>12 the -- the plans, and they're operated by a board</p> <p>13 of trustees. With the governmental entities, they</p> <p>14 are the employer.</p> <p>15 Q Are there any nongovernmental employers</p> <p>16 that number among your clients?</p> <p>17 A We have a small number of</p> <p>18 private-sector employers.</p> <p>19 Q Are any of them manufacturing firms?</p> <p>20 A No.</p> <p>21 Q Are any of them global in scope?</p> <p>22 A There are regional but not -- can I ask</p>	<p style="text-align: right;">Page 29</p> <p>1 agreement, be allowed to pay for benefits under</p> <p>2 one or more health plans; correct?</p> <p>3 A Yes.</p> <p>4 Q But it's -- it's distinguishable from</p> <p>5 the plan itself; right?</p> <p>6 A The VEBA trust?</p> <p>7 Q Correct. The -- the --</p> <p>8 A Yes.</p> <p>9 Q -- VEBA fund itself.</p> <p>10 A Yes.</p> <p>11 Q Okay. So with a fund like the</p> <p>12 Middletown Works fund, how many health plans is it</p> <p>13 allowed to provide -- under how many health plans</p> <p>14 is that fund allowed to provide to pay for</p> <p>15 benefits?</p> <p>16 A I'm not aware that there's a limit.</p> <p>17 Q Okay. But -- but as -- factually, how</p> <p>18 many?</p> <p>19 A They have -- they have one health plan</p> <p>20 for pre-Medicare retirees; they have one for</p> <p>21 Medicare retirees. They have a life insurance</p> <p>22 plan. They just added dental and investigation</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 30</p> <p>1 plans.</p> <p>2 Q So it has a different plan for</p> <p>3 pre-Medicare and Medicare --</p> <p>4 A It does.</p> <p>5 Q -- retirees?</p> <p>6 When were each of those plans enacted?</p> <p>7 A March of 1980 -- 1998.</p> <p>8 I'm sorry. I'm sorry.</p> <p>9 Q Okay.</p> <p>10 A March of 2008.</p> <p>11 Q And that's both of them --</p> <p>12 A Yes.</p> <p>13 Q -- both the Medicare and the --</p> <p>14 A Yes.</p> <p>15 Q -- pre-Medicare?</p> <p>16 Okay. When were the benefits under the</p> <p>17 pre-Medicare plan last modified?</p> <p>18 A They were -- there have been some --</p> <p>19 some what I would call minor changes to</p> <p>20 utilization management programs, for instance, in</p> <p>21 the prescription plan, to -- one was to make</p> <p>22 the -- the plan mandatory generic; one was to add</p>	<p style="text-align: right;">Page 32</p> <p>1 A They have -- let's see. They have</p> <p>2 three for active employees and pre-Medicare</p> <p>3 retirees, and two for Medicare retirees.</p> <p>4 Q You say three for actives and</p> <p>5 pre-Medicare. Do you mean that there are three</p> <p>6 plan --</p> <p>7 A There are three options that they --</p> <p>8 Q That --</p> <p>9 A -- can choose from.</p> <p>10 Q That actives in pre-Medicare -- that</p> <p>11 participants can choose from?</p> <p>12 A Yes.</p> <p>13 Q And two plans that are different from</p> <p>14 those three that the Medicare participants can</p> <p>15 choose from?</p> <p>16 A Yes.</p> <p>17 Q So the actives have the same choices as</p> <p>18 the pre-Medicare retirees?</p> <p>19 A Yes.</p> <p>20 Q When were those plans enacted?</p> <p>21 A Well, it was a --</p> <p>22 Q When -- okay.</p>
<p style="text-align: right;">Page 31</p> <p>1 some new modules to the step therapy program.</p> <p>2 In terms of the copays, the -- there's</p> <p>3 a very small change to the prescription copays in</p> <p>4 2011, I believe it was, where the formulary brand</p> <p>5 was reduced by a dollar and nonformulary was</p> <p>6 increased by \$2.</p> <p>7 Q The Medicare beneficiaries plan, when</p> <p>8 was the last time those benefits were modified?</p> <p>9 A Well, they -- they have the same</p> <p>10 prescription. They all have the same prescription</p> <p>11 program, so those changes were made the same for</p> <p>12 pre-Medicare and Medicare.</p> <p>13 Q And those changes were in 2011?</p> <p>14 A Yes.</p> <p>15 Q Your clients also include the Baltimore</p> <p>16 County public entities; correct?</p> <p>17 A Yes.</p> <p>18 Q I recognize that's actually several</p> <p>19 distinct clients; correct?</p> <p>20 A Yes.</p> <p>21 Q How many health plans are operated by</p> <p>22 those clients?</p>	<p style="text-align: right;">Page 33</p> <p>1 A Decades ago.</p> <p>2 Q Each of those?</p> <p>3 A Yeah.</p> <p>4 Q Each --</p> <p>5 A Yeah.</p> <p>6 Q -- each of those five plans have been</p> <p>7 around for decades?</p> <p>8 A Probably since the -- at least the</p> <p>9 1960s.</p> <p>10 Q The actives and pre-Medicare options,</p> <p>11 when was the last time those plans were modified?</p> <p>12 A They have -- there were three different</p> <p>13 entities. There's the community college -- which</p> <p>14 I don't -- I don't believe they have made any</p> <p>15 modifications in a couple of years -- that the</p> <p>16 school system increased their emergency room</p> <p>17 copay. I believe it was for 20 -- for 2013.</p> <p>18 The county government negotiated with</p> <p>19 their unions to make some changes to prescription</p> <p>20 copays in future years. I don't recall exactly</p> <p>21 what those changes were. I think they were --</p> <p>22 they were modest increases to the copays.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q So the community college hasn't made 2 modifications in a couple of years. Do you mean, 3 though, that they -- prior to a couple of years 4 ago they did make changes? 5 A Their changes have been -- have been 6 very small that I recall. 7 Q But they have changed; correct? 8 A Yes. 9 Q What about the two plan options for the 10 Medicare participants? When was the last time 11 those plans were modified? 12 A I -- I think it's been a couple of 13 years. 14 Q Okay. 15 A Maybe three or four years. 16 Q But those plans have also been modified 17 at some point since their enactment? 18 A Yes. 19 Q Another of your clients is the Truck 20 Drivers and Helpers Local 355 Health and Welfare 21 Fund; correct? 22 A Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 does the multi-employer fund correlate with? 2 A I estimate 20. 3 Q And only one provides retiree health 4 care benefits? 5 A Correct. 6 Q For the one that does provide retiree 7 health care benefits, does it offer one plan, two? 8 How many plans are available for its -- to its 9 retirees? 10 A One -- one pre-Medicare, and it's 11 essentially the same plan Medicare except that 12 it -- it complements Medicare. The medical piece 13 complements -- fills out the gaps in Medicare. 14 Q What about the nonmedical piece of it? 15 A It's the same. 16 Q When was the last time that employer's 17 plan for retirees was modified -- were modified, 18 sorry? 19 A They were just modified this year to 20 remove some annual maximums because of health care 21 reform. 22 Q What about prior to that?</p>
<p style="text-align: right;">Page 35</p> <p>1 Q And that's a multi-employer health and 2 welfare fund; correct? 3 A Yes. 4 Q Even though it's a multi-employer fund, 5 how many health plans does the fund pay for their 6 benefits? 7 A There are six. 8 Q And do the plans -- are the plans 9 different from each other because they respond or 10 they have participants from different employer 11 groups? 12 A The -- each employer can choose from -- 13 from three different plans that they want to put 14 their -- that they put their employees in. 15 Q Are the plans the same for active 16 employees and retirees? 17 A The -- the only group -- there's one -- 18 there's one employer that has retiree benefits. 19 Q Only one? 20 A (Witness nods head.) 21 Q How many other employers are there in 22 the multi-employer group -- how many employers</p>	<p style="text-align: right;">Page 37</p> <p>1 A It's about a -- it's been a number of 2 years. I don't recall. 3 Q Mr. Lynne, you were engaged to opine on 4 how CNH's proposed plan would affect plaintiffs; 5 correct? 6 A Yes. 7 Q How did you come to be engaged in this 8 project? 9 A I was contacted by Roger McCLOW. 10 Q Did Mr. McCLOW ask you any specific 11 questions in which he wanted opinions? 12 MS. BRAULT: I'm going to place an 13 objection. I think you're going into 14 communications that are outside the scope of Rule 15 26. 16 BY MR. ROGACZEWSKI: 17 Q Let me try and ask it a different way. 18 How did Mr. McCLOW describe the scope of the 19 engagement? 20 MS. BRAULT: Well, again, I think that 21 you're going into communications. I think that 22 his report indicates what the engagement was.</p>

10 (Pages 34 to 37)

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1 BY MR. ROGACZEWSKI:

2 **Q I'll take the answer.**

3 A I was asked to review the proposed
4 changes and their impact.

5 **Q Did Mr. McClow define for you what**
6 **"impact" meant?**

7 A Well, what the -- what the changes
8 would mean in terms of out-of-pocket costs for the
9 retirees.

10 **Q What facts, if any, did Mr. McClow**
11 **provide you with?**

12 A He -- well, he provided me with a
13 number of documents for the -- the current and
14 proposed plan.

15 **Q Were there any documents that you asked**
16 **him for?**

17 A I -- I believe the documents that he
18 provided seemed -- seemed comprehensive in terms
19 of allowing me to -- to do the analysis I wanted
20 to do.

21 **Q Over the course of the engagement, have**
22 **you requested specific information from -- from**

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1 plaintiffs' counsel?

2 A I -- I did ask for some additional
3 information about some of the cases that Mr. Macey
4 had discussed.

5 **Q And what did you ask for about those**
6 **cases?**

7 A Information that would -- would give me
8 more insight into what happened with -- with those
9 cases, communications about benefits or court
10 cases.

11 **Q Did you conduct any independent**
12 **research in connection with those cases?**

13 A I believe I did go on the -- the UAW
14 VEBA Web site.

15 **Q Is it fair to say, then, besides going**
16 **on the UAW VEBA Web site, what you know about**
17 **those cases comes to you from plaintiffs' counsel?**

18 A Yes.

19 **Q What did -- what have -- throughout the**
20 **course of the engagement, what have plaintiffs'**
21 **counsel told you about the rulings of the Sixth**
22 **Circuit in this case?**

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1 MS. BRAULT: I'm going to place an
2 objection. I don't think that that's within the
3 scope of 25, and I think it's going to
4 communications that are work product and
5 attorney-client privileged, so I'm going to
6 instruct him not to answer.

7 BY MR. ROGACZEWSKI:

8 **Q Are you going to follow the**
9 **instruction?**

10 A Yes.

11 **Q Okay. What assumptions have you been**
12 **asked to make for this engagement?**

13 A I haven't been asked to make
14 assumptions. I've been asked to review the --
15 review the records and perform analysis.

16 **Q Okay. Do you have an understanding**
17 **regarding the rulings of the Sixth Circuit in this**
18 **case?**

19 A I mean, as best as I -- as I think I
20 can reading the court opinion.

21 **Q And is that the source of your**
22 **understanding about the rulings of the Sixth**

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1 **Circuit in this case?**

2 A Yes.

3 **Q And what is your understanding of the**
4 **rulings of the Sixth Circuit in this case?**

5 A That -- that the benefits are
6 considered vested but that the Sixth Circuit
7 opined that it felt there could be changes made
8 provided they were -- I believe I remember the
9 phrase -- reasonably commensurate with current
10 benefits.

11 **Q Anything else about the Sixth Circuit**
12 **opinions?**

13 A I mean, I think they did mention
14 reviewing what had happened with -- with other --
15 with other cases or other employers.

16 **Q Anything else?**

17 A That's what I recall.

18 **Q Now, you've mentioned before that you**
19 **did request certain -- or you -- you made general**
20 **requests for information about situations referred**
21 **to by Mr. Macey, and you asked plaintiffs' counsel**
22 **for further information about those cases.**

11 (Pages 38 to 41)

<p style="text-align: right;">Page 42</p> <p>1 Am I remembering that correctly?</p> <p>2 A Yes.</p> <p>3 Q Have you asked plaintiffs' counsel for</p> <p>4 any other types of information throughout the</p> <p>5 engagement?</p> <p>6 A I think that we asked for -- although</p> <p>7 it could have just been provided by plaintiffs'</p> <p>8 counsel -- for some information on what pension</p> <p>9 benefits retirees were getting currently.</p> <p>10 Q Is there any information for which</p> <p>11 you've asked but were not provided?</p> <p>12 A I don't recall that.</p> <p>13 Q Regarding pension benefits, have you</p> <p>14 reviewed any pension plan documents?</p> <p>15 A Are you asking about a summary plan</p> <p>16 description?</p> <p>17 Q Let me ask it in -- let me ask two</p> <p>18 different questions.</p> <p>19 Over the course of the engagement, have</p> <p>20 you reviewed any pension agreements between CNH</p> <p>21 and the UAW?</p> <p>22 A I don't recall that.</p>	<p style="text-align: right;">Page 44</p> <p>1 MS. BRAULT: He has it in front of him</p> <p>2 for the purpose of refreshing his recollection.</p> <p>3 I'm only suggesting it might make it quicker.</p> <p>4 THE WITNESS: Oh, the Excel data.</p> <p>5 I received an Excel database.</p> <p>6 (Lynne Deposition Exhibit 4 was marked</p> <p>7 for identification and attached to the</p> <p>8 transcript.)</p> <p>9 BY MR. ROGACZEWSKI:</p> <p>10 Q Okay. Mr. Lynne, you've been handed</p> <p>11 what's been marked as Exhibit 4. It is labeled</p> <p>12 Plaintiffs' Expert Report authored by you. It's</p> <p>13 dated September 24, 2013.</p> <p>14 Do you recognize this document?</p> <p>15 A Yes.</p> <p>16 Q Have you seen it before?</p> <p>17 A Yes.</p> <p>18 Q And what is this document?</p> <p>19 A It's the expert report I prepared.</p> <p>20 Q And is this the document that you were</p> <p>21 just using to refresh your recollection?</p> <p>22 A (Witness reviews document.) This does</p>
<p style="text-align: right;">Page 43</p> <p>1 Q Have you reviewed any summary plan</p> <p>2 descriptions of the pension agreements?</p> <p>3 A I don't recall that.</p> <p>4 Q So what you know about pension benefits</p> <p>5 comes from plaintiffs' counsel?</p> <p>6 A I believe there were some -- some</p> <p>7 documents that showed individual pensions, and</p> <p>8 then there was a -- a file that was compiled that</p> <p>9 had a number of retirees and the pensions they</p> <p>10 were receiving.</p> <p>11 Q What documents do you recall showed</p> <p>12 individual pensions?</p> <p>13 A If I'm remembering correctly, they</p> <p>14 were -- just names and amounts, but I -- I may be</p> <p>15 thinking of another case here. Mainly it was</p> <p>16 the -- a file that had a range of pensions that</p> <p>17 retirees were getting.</p> <p>18 MS. BRAULT: If it helps you to refresh</p> <p>19 your recollection, you can look at Exhibit 1 to</p> <p>20 your report.</p> <p>21 MR. ROGACZEWSKI: It actually hasn't</p> <p>22 been marked yet, but --</p>	<p style="text-align: right;">Page 45</p> <p>1 refer to an Excel database, yes.</p> <p>2 Q All right. Is it -- but my question is</p> <p>3 a little different. Is it the document you were</p> <p>4 using to refresh your recollection?</p> <p>5 A The one I was looking at here was</p> <p>6 June 3rd.</p> <p>7 Q All right. What is the difference</p> <p>8 between the document that you used to refresh your</p> <p>9 recollection and Exhibit 4?</p> <p>10 A The -- the main difference was we had</p> <p>11 additional information with Towers Perrin</p> <p>12 projections -- Towers Perrin projections beyond</p> <p>13 their initial ten-year period, and we updated this</p> <p>14 report to reflect that. They were -- okay.</p> <p>15 Q No, you -- I didn't want to cut you</p> <p>16 off.</p> <p>17 A No, I'm done.</p> <p>18 Q You initially reviewed Towers Watson's</p> <p>19 projections through 2022; correct?</p> <p>20 A Yes.</p> <p>21 Q And then in your June report, you went</p> <p>22 ten years further, correct, to 2032?</p>

12 (Pages 42 to 45)

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1 A No, I believe it was in the September
2 report that we went ten years further. Oh, I'm
3 sorry. I'm sorry. Yes, we -- I misunderstood the
4 question. We -- in the June report, we had the
5 data from Towers and we made our own estimates for
6 another ten years.

7 Q Why did you run it out another ten
8 years?

9 A Just to -- you know, because the bulk
10 of the retirees would still be -- there would
11 still be a large retiree group alive for more than
12 ten years, and we wanted to see what the impact of
13 the proposed changes would be going out another
14 ten years, see the increasing impact.

15 Q Within your industry, is there a period
16 of time beyond which actuarial projections become
17 unrealistic?

18 A I mean, we have to make our best
19 estimates. I think we're always making estimates
20 for calculating retiree liabilities, and they go
21 out until the last one is expected to be around.
22 I think -- I think we have a -- a pretty good

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1 model for taking the projections out a number of
2 years.

3 Q I'm not suggesting that you've done
4 anything incorrectly, by the way. I'm just -- I'm
5 asking a slightly different question, which is,
6 projecting something out 20 years, lots of things
7 can change between now and then; correct?

8 A It could.

9 Q At what point in the project did you
10 decide to project out to 2032 instead of perhaps
11 some earlier point?

12 A It was -- we had gotten the data from
13 Towers going out ten years, and as we were
14 preparing this initial report, we -- we thought it
15 would be good to look even further out to estimate
16 the impact.

17 Q Do you know why Towers only went out
18 ten years initially?

19 A I don't.

20 Q Okay. To the best of your
21 recollection, was it always your intention in the
22 engagement to run it out to 2032?

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1 A We -- as we were doing our analysis, we
2 were deciding how far we wanted to look out to see
3 the impact, so when you say "always," I mean, from
4 the first day of the engagement, we didn't have an
5 idea. But as we were doing the analysis, we
6 decided it would be -- we thought it would be
7 useful to take it out a further period of time
8 because, again, the retirees -- there would still
9 be a large number of retirees around even in 2032.

10 Q Now, you also calculated a maximum
11 out-of-pocket liability using participants with
12 the highest usage of services; correct?

13 A Yes.

14 Q Whose idea was it to do that?

15 MS. BRAULT: I'm going to place an
16 objection. I -- I guess I'm -- I would like some
17 clarification. Are you asking him if it was an
18 instruction by counsel to do that? And, if so, I
19 object as it exceeds the scope of 26.

20 BY MR. ROGACZEWSKI:

21 Q I'll take the answer.

22 MS. BRAULT: Well, I would like to know

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1 if the question is intending to breach
2 attorney-client communications.

3 MR. ROGACZEWSKI: Well, I'm trying to
4 find out what questions Mr. Lynne was asked. And
5 if Mr. Lynne was asked to identify what the
6 maximum out-of-pocket liability is using the
7 highest number of users, I think that does fall
8 within the scope of what he's allowed to testify
9 to.

10 MS. BRAULT: You should indicate before
11 you answer the question whether you're going to
12 answer with respect to what attorneys may have
13 said to you or people in your team may have said
14 to you.

15 THE WITNESS: Looking at the maximum
16 exposure for any person in a group with a plan
17 change is something that we would normally do
18 anyway, so I believe that we -- this is part of --
19 an assignment like this would be to look at sort
20 of the worst-case scenario for anyone impacted by
21 a plan change.

22 BY MR. ROGACZEWSKI:

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 Q Is this something that you do in your 2 client engagements? 3 A Yes. 4 Q Is this something that you do in all 5 your client engagements? 6 A Well, if -- if we're looking at plan 7 changes, it's a very typical part of it because -- 8 especially with the multi-employer plans. 9 There's -- there's always concern about taking 10 care of the membership and see what -- you know, 11 what the -- they -- they want to know what the 12 worst-case scenario would be for their 13 participants -- 14 Q What about -- 15 A -- so -- 16 Q What about your plan sponsor clients? 17 A We certainly do that there as well, 18 maybe not as much, but -- but, again, a number of 19 those situations are -- do involve negotiations or 20 discussions with unions, so it's good to be 21 prepared with that information. 22 Q You used pension data provided to you</p>	<p style="text-align: right;">Page 52</p> <p>1 was it a better plan; was it a worse plan. 2 Q You looked at the 1990 plan before you 3 saw Mr. Macey's expert report in this case; 4 correct? 5 A I think his initial report talked about 6 that if I recall correctly. 7 Q His report from 2006? 8 A Yeah. 9 Q That's your recollection? 10 A That's my recollection. 11 Q Okay. Did you ask to review the 1990 12 indemnity plan? 13 A Yeah. I mean, when we're looking at 14 the progression of -- of plan changes, it made 15 sense to look at changes that were made -- that 16 were negotiated and then -- and see how those 17 changes compare to what was proposed. 18 Q You didn't look at the 1995 plan, 19 though; correct? 20 A I don't recall that. 21 Q Were you -- are you aware that there is 22 an intervening plan between the 1990 and the 1998</p>
<p style="text-align: right;">Page 51</p> <p>1 by plaintiffs' counsel; correct? 2 A Yes. 3 Q Did you do anything to verify that 4 data? 5 A No. 6 Q You also reviewed the so-called 7 indemnity plan from 1990 between Case Corporation 8 and the UAW; correct? 9 A Yes. 10 Q How about that relate to your 11 engagement? 12 A We just wanted to understand sort of 13 the history of -- of the plan, and there were 14 discussions about managed care -- introducing 15 managed care plans, and there was -- there was an 16 assertion by -- I believe it was Mr. Macey -- that 17 the introduction of the 1998 plan, the network 18 managed plan, was -- contained some takeaways. 19 And, so, what we wanted to do was to 20 look at the benefits that we're providing under 21 the 1990 plan and compare them to the 1998 plan to 22 see what in -- in totality that -- that plan did:</p>	<p style="text-align: right;">Page 53</p> <p>1 plan? 2 A I don't recall. 3 Q Did you ask for all prior plans? 4 A That was my intent, yeah. 5 Q But you -- you were not given the 1995 6 plan? 7 A There were a lot of documents. I . . . 8 Q But it's your recollection that you 9 asked to review the 1990 plan? 10 A It was my recollection that that was 11 the plan that preceded the 1998 plan. 12 Q Looking at the Exhibit 4, page 7, 13 paragraph 1, it says, Charts showing projected 14 costs under the current plan are attached as 15 Exhibit 3. 16 Do you see that? 17 A You're talking about -- 18 Q In paragraph -- numbered paragraph 1. 19 A Yep. 20 Q Do you see that? 21 A Yes. 22 Q Are there charts attached to Exhibit 4?</p>

14 (Pages 50 to 53)

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1 A (Witness reviews document.) I don't
2 see them in this document.

3 Q Do you know why there are no charts in
4 Exhibit 4?

5 A (Witness reviews document.) No, I
6 don't.

7 Q Did you review Exhibit 4 before you
8 signed it?

9 A Yes.

10 (Lynne Deposition Exhibit 5 was marked
11 for identification and attached to the
12 transcript.)

13 BY MR. ROGACZEWSKI:

14 Q All right. Mr. Lynne, you have in
15 front of you what's been marked as Exhibit 5,
16 which is also titled Plaintiffs' Expert Report
17 authored by you. This one is dated June 3rd,
18 2013.

19 Have you seen this document before?

20 A Yes.

21 Q What is this document?

22 A This is the first expert report that I

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1 prepared.

2 Q Okay. Now, looking at the same -- on
3 page 7, numbered paragraph number 1, this also
4 says, Charts showing projected costs under the
5 current plan are attached as Exhibit 3; correct?

6 A Yes.

7 Q Does Exhibit 5 have charts attached to
8 it?

9 A Yes.

10 Q Was it your intent that the charts that
11 are attached to Exhibit 5 would be in Exhibit 4?

12 A Yes, they were -- yes.

13 Q Do you recall making any changes to
14 Exhibits 3 and Exhibits 4 to Exhibit 5, your June
15 expert report, between June 3rd and
16 September 24th?

17 A No.

18 Q So if we look at the charts attached to
19 the initial expert report and use them in
20 combination with the September expert report,
21 would that be fair?

22 A Yes.

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1 Q Okay. Let's look back at Exhibit 4.
2 It's the more current one. Let's look at
3 paragraph 5.

4 A What page is that?

5 Q That's on page 8. I apologize.

6 A Okay.

7 Q Now, you project that a
8 Medicare-eligible retiree will have to pay \$2,138
9 out-of-pocket in 2013 under the proposed plan
10 instead of 130 under the current plan; correct?

11 A 2,176 compared to 138, I believe.

12 Q Okay. I apologize for misreading the
13 number. It was not intentional.

14 That projection is still less than \$200
15 a month, isn't it?

16 A Yes.

17 Q Now, you say that the 2022 projection
18 of 3,735 is 26 times that of the current plan;
19 right?

20 A 2,607 percent, yes.

21 Q That's comparing the projection for the
22 proposed plan under 2022 with the current plan,

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1 2013; right?

2 A (Witness reviews document.) Yes.

3 Q If you were to compare it, though, to
4 the 2013 projection for the proposed plan, it's
5 only about a 70 percent increase; isn't that
6 correct?

7 A Do I get to use a calculator?

8 Q I don't mind. I'm certainly not
9 pretending you're a computer.

10 A So you are comparing in Section 5 the
11 3,735 to the 2,176?

12 Q Correct.

13 A Seventy-three percent.

14 Q And that's about the same -- and the
15 2032 projection, \$7,143, is about 228 percent of
16 the 2013 projection under the -- under the
17 proposed plan; correct?

18 A Well, it's 3.3 times as much, yeah.

19 Q Aren't those about the same levels of
20 increase under the current plan?

21 A Well, they're three times higher in the
22 current plan versus 3.8 but off a very different

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 base.</p> <p>2 Q But aside from the first-year increase,</p> <p>3 you would agree that the -- for Medicare eligible</p> <p>4 participants, the rate of out-of-pocket increase</p> <p>5 is roughly the same under the current and proposed</p> <p>6 plan year to year?</p> <p>7 A It's higher in the proposed plan.</p> <p>8 Q Even after the first year?</p> <p>9 A Well, comparing 2032 to 2013, the one</p> <p>10 is a factor of 3.8 and the other is a factor of</p> <p>11 3.0, so that's significant to me.</p> <p>12 Q Okay. For the Medicare eligibles, a</p> <p>13 large portion of the increased cost is the use of</p> <p>14 Part D for prescription drugs; correct?</p> <p>15 A Correct.</p> <p>16 Q Now, you talk in your report about the</p> <p>17 relative value of the plans, and that -- and you</p> <p>18 calculate that by looking at the plan share of the</p> <p>19 cost divided by combination of the cost that --</p> <p>20 that the plan -- the participants pay; correct?</p> <p>21 A Yes.</p> <p>22 Q And for part -- for -- for prescription</p>	<p style="text-align: right;">Page 60</p> <p>1 piece that Medicare pays something?</p> <p>2 Q Well, in the case of the medical</p> <p>3 benefits, yes.</p> <p>4 In the case of the prescription drug</p> <p>5 benefits, there's two payors; right?</p> <p>6 A Currently.</p> <p>7 Q Right. And that represents the total</p> <p>8 amount that the benefits cost to all payors;</p> <p>9 right?</p> <p>10 A Yes.</p> <p>11 Q And under the proposed plan, a portion</p> <p>12 of those benefit costs are going to be paid by</p> <p>13 neither the company nor the participants; correct?</p> <p>14 A I mean, there is some federal subsidy,</p> <p>15 but we don't know what it is.</p> <p>16 Q But it would -- you know, if you were</p> <p>17 to factor that in, wouldn't it reduce the</p> <p>18 amount -- the percentages by the company and the</p> <p>19 participant that are paying for the benefits?</p> <p>20 A I would never look at it that way.</p> <p>21 Q Why not?</p> <p>22 A Because I'm looking at what the -- the</p>
<p style="text-align: right;">Page 59</p> <p>1 drug plan cost or for plan cost for Medicare</p> <p>2 eligibles, you're not factoring in the amount of</p> <p>3 the benefit costs that are paid for by the</p> <p>4 government; correct?</p> <p>5 A No.</p> <p>6 Q You would agree that if you were to</p> <p>7 put -- if you were to factor in them to the total</p> <p>8 spending amount, the relative value numbers would</p> <p>9 be different; correct?</p> <p>10 A But the relative value I'm looking at</p> <p>11 is what the employer is providing, so I don't</p> <p>12 understand how that's relevant.</p> <p>13 Q Well, the current plan there's two --</p> <p>14 there's two -- there's two -- there are three</p> <p>15 payors; right?</p> <p>16 There's the plan for the -- well,</p> <p>17 there's other payors, whether it's another</p> <p>18 insurance provider or Medicare, the government,</p> <p>19 and the participants; correct?</p> <p>20 A For the current plan?</p> <p>21 Q Yeah.</p> <p>22 A You're talking about for the medical</p>	<p style="text-align: right;">Page 61</p> <p>1 company is providing for its retirees, and</p> <p>2 that's -- I mean, they're not facing any cost for</p> <p>3 that.</p> <p>4 Q So you don't think it's misleading to</p> <p>5 say that the participants are picking up X percent</p> <p>6 of the -- of the cost of their benefit when that</p> <p>7 ratio doesn't account for the amount that the</p> <p>8 government is paying?</p> <p>9 A No, because we're looking here at how</p> <p>10 much is in the -- the agreement between the</p> <p>11 employer and the employee and who's paying what.</p> <p>12 I mean, we don't look at the -- the current plan</p> <p>13 now, we don't look at what the federal government</p> <p>14 might be paying for Medicare and factor that in.</p> <p>15 I mean, that's -- that's -- it's irrelevant to</p> <p>16 what the cost is between these two parties.</p> <p>17 Q It may be -- it may be, but it is</p> <p>18 relevant in calculating their share of the total</p> <p>19 cost of the benefits, isn't it?</p> <p>20 A I wouldn't agree.</p> <p>21 Q You would agree, though, that if you</p> <p>22 were to factor it in, the percentage of the</p>

16 (Pages 58 to 61)

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1 participant's share would go down, wouldn't it?

2 A If you were to factor it in.

3 Q Now, there are changes in the Part D
4 program that will further mitigate the
5 participants' out-of-pocket cost under Part D;
6 correct?

7 A Yes.

8 Q Have those been factored into your
9 analysis?

10 A Well, we -- as I think I mentioned, we
11 had used Towers Watson's projections for the first
12 ten years, so it -- it is our understanding that
13 they -- that that was factored in, the -- the
14 decreasing of the doughnut hole.

15 Q All right. So you're factoring in that
16 by 2020 participants will be responsible for only
17 25 percent of the coverage gap?

18 MS. BRAULT: Can I just ask that there
19 be a clarification when you ask questions about
20 Medicare-eligible retirees and whether you're
21 talking about the medical benefit versus the
22 prescription drugs, because I think that the

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1 record has gotten quite confused on that issue?

2 BY MR. ROGACZEWSKI:

3 Q I'll take the answer.

4 A Can you repeat the question?

5 Q It's your understanding that your
6 projections are accounting for the fact that by
7 2020 the prescription drug coverage gap under
8 Medicare Part D will be mitigated such that
9 participants are responsible for 25 percent of
10 those costs?

11 A That is my understanding.

12 Q What's the basis of that understanding?

13 A (Witness reviews document.) My
14 recollection of what the notes were on the Towers
15 Watson's projection spreadsheets, of what they
16 accounted for.

17 (Lynne Deposition Exhibit 6 was marked
18 for identification and attached to the
19 transcript.)

20 BY MR. ROGACZEWSKI:

21 Q Mr. Lynne, you have in front of you
22 what's been marked as Exhibit 6, which is a CBO

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1 article called Spending Patterns For Prescription
2 Drugs Under Medicare Part D. It was produced by
3 you at pages 30 through 36 -- 30 -- I'm sorry, 30
4 through 41.

5 This is an article that you -- that you
6 reviewed; correct?

7 A Yes.

8 Q All right. And you would agree that as
9 far as the CBO was concerned in analyzing spending
10 under Medicare Part D, it looks at what's called
11 total spending; correct?

12 A That's my understanding.

13 Q And total spending refers to the drug
14 spending by all payors; correct?

15 A (Witness reviews document.) Yes.

16 Q And, so, I mean, at least one other --
17 I mean, the CBO is looking at things it's
18 important to look at, not just the -- what the
19 plan is paying and what the participant is paying,
20 but the share that's being picked up by the
21 government?

22 A Well, I would think if anybody would

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1 the CBO would because they're looking at their own
2 spending.

3 Q But you don't think it's important?

4 MS. BRAULT: I'm going to place an
5 objection; that's argumentative. And he has
6 already answered the questions as to why he did
7 not factor in the percentage that CNH is shifting
8 to the government in their proposed plan.

9 BY MR. ROGACZEWSKI:

10 Q I'll take the answer.

11 A Yeah.

12 Q Going back to Exhibit 4, let's look at
13 paragraph 7 on page 8. You're projecting that a
14 non-Medicare eligible retiree will have to pay
15 \$1,587 out-of-pocket in 2013 instead of the \$227
16 that's being projected under the current plan; is
17 that correct?

18 A Yes.

19 Q And that's still less than \$140 a
20 month, isn't it?

21 A You're making me get the calculator out
22 again.

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 Yes.</p> <p>2 Q And in -- and you can feel free to look</p> <p>3 at charts in Exhibit 5 for this purpose, but in</p> <p>4 2014 you're projecting about \$200 a month;</p> <p>5 correct?</p> <p>6 A Yes.</p> <p>7 Q And in 2015, the projection is about</p> <p>8 \$275 a month; correct?</p> <p>9 A Yes.</p> <p>10 Q Jumping forward to 2019, the projection</p> <p>11 is about \$600 a month?</p> <p>12 A Yes.</p> <p>13 Q Now, in 2019, though, the projection is</p> <p>14 that only 10 percent of the participants will be</p> <p>15 not eligible for Medicare; is that correct?</p> <p>16 A I don't know the exact number, but that</p> <p>17 sounds correct. You're going to . . .</p> <p>18 Q I try to ask first and then refresh.</p> <p>19 (Lynne Deposition Exhibit 7 was marked</p> <p>20 for identification and attached to the</p> <p>21 transcript.)</p> <p>22 BY MR. ROGACZEWSKI:</p>	<p style="text-align: right;">Page 68</p> <p>1 Q Correct.</p> <p>2 A Yes, compared to less than 20 a month</p> <p>3 in the current plan, but, yes.</p> <p>4 Q By the way, this -- Exhibit 7 projects</p> <p>5 that there will still be 13 participants that are</p> <p>6 not Medicare eligible in 2032.</p> <p>7 Do you have an opinion as to what</p> <p>8 accounts for that?</p> <p>9 A CNH retirees either marrying young</p> <p>10 spouses or having children.</p> <p>11 Q And the children --</p> <p>12 A Probably young spouses.</p> <p>13 Q Have you looked at the demographics</p> <p>14 currently to see if anyone would actually fit</p> <p>15 within that?</p> <p>16 A Not -- not recently.</p> <p>17 Q Is Exhibit 7 created by starting with</p> <p>18 what you know to be true currently and then using</p> <p>19 actuarial -- recognize actuarial estimates to</p> <p>20 project forward?</p> <p>21 A Yes.</p> <p>22 Q Now, for pre-Medicare eligibles, the</p>
<p style="text-align: right;">Page 67</p> <p>1 Q You've been handed what's been marked</p> <p>2 as Exhibit 7. It has the case name at the top and</p> <p>3 then it has a title Estimated Total Participants.</p> <p>4 It's dated June 3rd, 2013. It was produced by you</p> <p>5 at page 913.</p> <p>6 Do you recognize this document?</p> <p>7 A Yes.</p> <p>8 Q And what is this document?</p> <p>9 A It was our estimate for how many</p> <p>10 retirees would be in the plan -- how many</p> <p>11 participants would be in the plan through 2032</p> <p>12 split by pre- and post-Medicare.</p> <p>13 Q Would you agree in 2019 you're</p> <p>14 projecting about 90 percent of the participants</p> <p>15 would be Medicare eligible?</p> <p>16 A Yes.</p> <p>17 Q So for those participants, they're</p> <p>18 paying only \$315 a month in 2019; is that correct?</p> <p>19 A (Witness reviews document.) I'm sorry.</p> <p>20 How much did you say?</p> <p>21 Q 315.</p> <p>22 A In 2019?</p>	<p style="text-align: right;">Page 69</p> <p>1 premium is a large share of the out-of-pocket</p> <p>2 costs; correct?</p> <p>3 A I would say that's reasonable to state</p> <p>4 that.</p> <p>5 Q The premiums are tied to plan cost</p> <p>6 increases year over year; correct?</p> <p>7 A Yes.</p> <p>8 Q So if the plan cost increases are not</p> <p>9 that great in the future, the premiums would be</p> <p>10 less than what they're projected; correct?</p> <p>11 A Yes.</p> <p>12 Q And under the proposed plan, both</p> <p>13 participants and the plan have an incentive to</p> <p>14 keep costs down; correct?</p> <p>15 MS. BRAULT: I'm sorry. Could you</p> <p>16 repeat that question?</p> <p>17 BY MR. ROGACZEWSKI:</p> <p>18 Q Under the proposed plan, both</p> <p>19 participants and the plan have incentives to keep</p> <p>20 total plan costs down?</p> <p>21 A I'm -- I'm not sure I saw any</p> <p>22 incentives built into the plan design that</p>

18 (Pages 66 to 69)

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1 would -- that would reflect that statement.

2 **Q Well, they both share in the cost of**
3 **the premium -- of -- of the premium increases;**
4 **correct?**

5 **A They do.**

6 **Q And the plan's responsible for**
7 **40 percent of the plan increases and the**
8 **participants are responsible for 60 percent;**
9 **correct?**

10 **A Yes.**

11 **Q So they both have a stake in keeping**
12 **the plan cost down?**

13 **A I guess that's correct.**

14 **Q Under the current plan, however, the**
15 **participants have little incentive to keep the**
16 **plan costs down; correct?**

17 **A (Witness reviews document.) They do**
18 **bear out-of-pocket -- some out-of-pocket expenses**
19 **if they -- if they use significant plan resources,**
20 **so there is still some incentive.**

21 **Q But their incentive is dwarfed by the**
22 **incentive of the plan to keep the cost down?**

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1 **MS. BRAULT: Object to the use of the**
2 **term "dwarfed."**

3 **THE WITNESS: Well, it's certainly true**
4 **they would pay a significantly higher amount in**
5 **the new plan.**

6 **BY MR. ROGACZEWSKI:**

7 **Q And under the proposed plan, a larger**
8 **share of the increases year over year are borne by**
9 **the company; correct?**

10 **A By the company?**

11 **Q (Indicated affirmative.)**

12 **A No.**

13 **Q Under the current plan.**

14 **A Oh, the current plan. Yes, the company**
15 **picks up a larger share.**

16 **Q A much larger share than the**
17 **participants; correct?**

18 **MS. BRAULT: I'm just going to place an**
19 **objection. I think that's argumentative. The**
20 **numbers say what the numbers say. Are you asking**
21 **him to quantify in some way other than the numbers**
22 **what the -- what the relative shares are?**

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1 **BY MR. ROGACZEWSKI:**

2 **Q I'll take the answer.**

3 **A The numbers show that the company picks**
4 **up more of the cost.**

5 **Q But you're not willing to say**
6 **significantly more?**

7 **A It's -- it's more.**

8 **Q Okay. Are you uncomfortable with the**
9 **word "significant"?**

10 **A Not always.**

11 **MS. BRAULT: Objection: argumentative.**
12 **Next question.**

13 **BY MR. ROGACZEWSKI:**

14 **Q I'll take the answer.**

15 **MS. BRAULT: You don't have to give an**
16 **answer if you don't want to.**

17 **MR. ROGACZEWSKI: I disagree, and I**
18 **would encourage Ms. Brault not to make speaking**
19 **objections. It's inappropriate.**

20 **THE WITNESS: I sometimes use the word**
21 **"significant."**

22 **BY MR. ROGACZEWSKI:**

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1 **Q You do?**

2 **A (Witness nods head.)**

3 **Q Why are you unwilling to use it in this**
4 **instance?**

5 **A (Witness reviews document.) I'm not**
6 **sure I can answer that.**

7 **Q Your opinion is that the relative share**
8 **of cost under the current plan is constant,**
9 **correct, for pre-Medicare and Medicare eligible**
10 **retirees?**

11 **A Yes, and so the -- the percentage stays**
12 **the same, and they each pick up proportionately**
13 **the same as they are now.**

14 **Q Right. And, so, does that mean -- that**
15 **means the percentage is about 98 percent, I think**
16 **you -- that the plan is picking up?**

17 **A Yes.**

18 **Q So that means that as the plan costs**
19 **increase, the plan is picking up 98 percent of the**
20 **cost increase; right?**

21 **A That's correct.**

22 **Q And the participants are picking up**

19 (Pages 70 to 73)

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<p>1 maybe 2 percent?</p> <p>2 A Yes.</p> <p>3 Q And 98 is not significantly more than</p> <p>4 2?</p> <p>5 A Well . . . (witness reviews document.)</p> <p>6 Just as 31 is significantly less than</p> <p>7 98.</p> <p>8 Q I'm sorry. Could I get an answer to</p> <p>9 the question? My question was a little different.</p> <p>10 Is 98 significantly more than 2?</p> <p>11 A Yes.</p> <p>12 Q Thank you.</p> <p>13 Let's talk about the 1990 plan. You</p> <p>14 calculated the relative value of the 1990 plan to</p> <p>15 be 93; correct?</p> <p>16 A Yes.</p> <p>17 Q You understand that the 1990 plan was</p> <p>18 in fact negotiated away in 1998; correct?</p> <p>19 A Yes.</p> <p>20 Q And that it's neither the current plan</p> <p>21 nor the proposed plan; correct?</p> <p>22 A Correct.</p>	<p>1 A I don't recall what they said.</p> <p>2 Q Okay. You don't know if the Sixth</p> <p>3 Circuit agrees with you or disagrees with you?</p> <p>4 A I don't remember what they said about</p> <p>5 that, but I know what we saw in terms of the --</p> <p>6 the provider networks painted a very different</p> <p>7 picture.</p> <p>8 Q And how is the 1990 plan relevant to</p> <p>9 whether the benefits provided under the proposed</p> <p>10 plan were reasonably commensurate with what are in</p> <p>11 the current plan?</p> <p>12 MS. BRAULT: Same objection, and he</p> <p>13 answered your question.</p> <p>14 MR. ROGACZEWSKI: I disagree, and I'll</p> <p>15 take the answer.</p> <p>16 THE WITNESS: Well, looking at a change</p> <p>17 that was negotiated by the parties as an</p> <p>18 improvement, I certainly didn't see the proposed</p> <p>19 plan as anything like an improvement at all.</p> <p>20 BY MR. ROGACZEWSKI:</p> <p>21 Q So it's your understanding that only</p> <p>22 improvements are permissible under the Sixth</p>
Page 75	Page 77
<p>1 Q So the 1990 plan really has nothing to</p> <p>2 do with whether the current plan is reasonably</p> <p>3 commensurate with the proposed plan, is it?</p> <p>4 MS. BRAULT: I'm going to place an</p> <p>5 objection to form and foundation.</p> <p>6 THE WITNESS: What I was attempting to</p> <p>7 discuss was -- is that Mr. Macey was -- was</p> <p>8 stating that the '98 plan required significant</p> <p>9 concessions or give-backs by the union because it</p> <p>10 was a network managed plan. And my point was</p> <p>11 that, first of all, there were -- there were very</p> <p>12 few changes from what I could see in the numbers</p> <p>13 of providers, so people were not forced to change</p> <p>14 providers. And the plan was a better plan.</p> <p>15 So I was simply responding to that --</p> <p>16 to that statement.</p> <p>17 BY MR. ROGACZEWSKI:</p> <p>18 Q Do you have an understanding as to what</p> <p>19 the Sixth Circuit has said about this issue?</p> <p>20 A About managed plans?</p> <p>21 Q About the switch to managed care in</p> <p>22 1998.</p>	<p>1 Circuit's ruling?</p> <p>2 MS. BRAULT: I'm going to place an</p> <p>3 objection to form, and it exceeds the scope of his</p> <p>4 retention.</p> <p>5 BY MR. ROGACZEWSKI:</p> <p>6 Q I'll take the answer.</p> <p>7 A As I understood their opinion,</p> <p>8 reasonable changes. The 1990 to '98 looked</p> <p>9 reasonable to me. Comparing that change to the</p> <p>10 proposed change, those things look very different.</p> <p>11 Q Just because one change might be</p> <p>12 considered reasonable doesn't mean that another</p> <p>13 change isn't; correct?</p> <p>14 A You have to look at each one</p> <p>15 separately.</p> <p>16 Q And you understand that the issue</p> <p>17 before the court is between the current and the</p> <p>18 proposed plan; correct?</p> <p>19 A I do, but I think an historical</p> <p>20 perspective is important.</p> <p>21 Q And the 1990 plan has nothing to do</p> <p>22 with whether any changes in the proposed plan are</p>

20 (Pages 74 to 77)

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1 reasonable in light of changes in health care, is
2 it?

3 A I don't understand the question.

4 Q Let me ask it a different way. How was
5 the 1990 plan relevant to whether changes in the
6 proposed plan -- to the current plan are
7 reasonable in light of changes in health care?

8 A I think it shows how plans can be
9 modified as the health care climate changes. 1990
10 to '98 responded to the predominance of these
11 network or managed plans, and so that was -- that
12 became the new plan then. And what I thought was
13 relevant about that change was that it was -- it
14 appeared to me to be a plan that benefited both
15 parties. You got -- you got a managed plan in
16 place, a network plan that had some advantages for
17 discounts with providers, but you also got some
18 benefit improvements.

19 Q So only plans that benefit both sides
20 are -- satisfy the Reese standard?

21 A I'm not sure I can comment on exactly
22 what the Sixth Circuit is looking for here.

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1 Q You just said, though, that it was
2 relevant to you that the plan provided benefits to
3 both sides; correct?

4 A Yes.

5 Q And I'm asking you if it's your belief,
6 if it's your opinion that only plans that satisfy
7 that criteria satisfy Reese?

8 MS. BRAULT: Let me place an objection.
9 I think it exceeds the scope of his retention and
10 is therefore an improper question.

11 BY MR. ROGACZEWSKI:

12 Q I'll take the answer.

13 A I mean, I think that should be the
14 objective of -- of any reasonable plan change.

15 Q That it benefits both sides?

16 A That there's give and take.

17 Q And that if it doesn't, it doesn't
18 satisfy the reasonable standard?

19 A I -- I think --

20 MS. BRAULT: Objection to form.

21 BY MR. ROGACZEWSKI:

22 Q I'll take the answer.

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1 A I mean, looking at the proposed plan,
2 there appear to be no benefits at all for the
3 plaintiffs, and I don't think that satisfies the
4 reasonableness standard.

5 Q So it would have to provide some
6 benefits to the participants in order to be
7 reasonable?

8 A Well, I don't know exactly the
9 magnitude, but I would think that all -- all take
10 and no give is not reasonable.

11 Q And the 1990 plan would obviously have
12 nothing to do with whether the proposed plan is
13 roughly consistent with what CNH is providing its
14 current employees; correct?

15 MS. BRAULT: I'm going to place an
16 objection. I think you're asking him for a legal
17 conclusion about what may or may not be relevant
18 to a legal standard, and it exceeds the scope of
19 his report.

20 BY MR. ROGACZEWSKI:

21 Q I'll take the answer.

22 MR. ROGACZEWSKI: And I'll again ask

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1 Ms. Brault not to make speaking objections.

2 THE WITNESS: I think it's important to
3 look at, you know, the history of changes that
4 have been made in the past, so I -- again, I think
5 from an historical perspective it's important to
6 look at that plan.

7 BY MR. ROGACZEWSKI:

8 Q That's important to whether it's -- the
9 proposed plan's roughly consistent with what's
10 being offered currently?

11 A Again, I think it's important to look
12 at all the history.

13 Q Even when you're comparing to what's
14 being offered now?

15 A Well, it's -- it's -- the health care
16 field changes, but, yes, I think the -- looking at
17 history's important.

18 Q You concluded that the proposed plan
19 has different relative value for the pre-Medicare
20 participants and the Medicare participants;
21 correct?

22 A Yes.

21 (Pages 78 to 81)

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<p>1 Q And you concluded that that wasn't the 2 case in both the current plan and the 1990 plan; 3 correct? 4 A I don't believe I came up with exact 5 relative values. 6 (Court reporter asks for 7 clarification.) 8 THE WITNESS: I don't believe I came up 9 with relative value numbers for the -- other 10 than -- than the cost exhibits here. 11 BY MR. ROGACZEWSKI: 12 Q So it's not your recollection that you 13 concluded that the relative values for the 1990 14 plan and the current plan were not different for 15 pre-Medicare and Medicare-eligible participants? 16 A It's my understanding that the pre- and 17 post-Medicare participants had the same benefits 18 with the exception of Medicare paying first on the 19 medical. 20 Q It's not your opinion, though, that 21 plans can't provide different benefits for 22 pre-Medicare eligibles and Medicare-eligible</p>	<p>1 say you get the same benefit, but on the medical 2 side we pay after Medicare pays and go up to the 3 same place. 4 Q But neither one is conceptually 5 unreasonable; correct? 6 A No. 7 Q You agree, by the way, that there is no 8 difference in quality of care between the current 9 and proposed plan; correct? 10 A Can you define "quality of care"? 11 Q Well, let me ask you to look at 12 paragraph 26 of -- of Exhibit 4, where you say, 13 quote, There is no difference in the quality of 14 care that will be provided under the proposed plan 15 compared to the current plan, unquote. 16 Do you still agree with that statement? 17 A I do. 18 (Lynne Deposition Exhibit 8 was marked 19 for identification and attached to the 20 transcript.) 21 BY MR. ROGACZEWSKI: 22 Q Now, you say that the proposed plan</p>
Page 83	Page 85
<p>1 participants; correct? 2 A Correct. 3 Q And to the extent the proposed plan has 4 different relative values, it's because of Part D; 5 correct? 6 A Well, that's -- that's part of it. 7 Q In the case of the Medicare eligibles; 8 correct? 9 A But there's also a different medical 10 plan. 11 Q And you're not suggesting, though, that 12 movement to a plan that treats Medicare 13 participants and pre-Medicare participants make 14 this unreasonable as a conceptual matter? 15 A I'm sorry. Can you state that again? 16 Q That's fair. It was a bad question. 17 You're not suggesting that it is 18 unreasonable to propose a plan that conceptually 19 treats Medicare-eligible participants and 20 pre-Medicare participants differently? 21 A I mean, certainly there are plans out 22 there that do that. There are others that simply</p>	<p>1 has, quote, more restrictions and exclusions on 2 coverage than the current plan, unquote; right? 3 A (Witness nods head.) 4 Q Can you identify those restrictions to 5 me? 6 And while you're -- since you're 7 looking at it, you've been handed what's been 8 marked as Exhibit 8. It was produced by you at 9 pages 111 through 200. What is your understanding 10 as to what this document is? 11 A My understanding is this was the -- the 12 plan that CNH wishes the -- this plaintiff group 13 to go into. 14 One of the restrictions that I saw can 15 be found on page B-25. I did not see the 16 life-style prescription limitation in the previous 17 plan. These things are not written for easy 18 finding. Can you bear with me? 19 Q I can. I'm not trying to rush you, 20 believe me. 21 A And then on page B-18, when I was 22 comparing expenses not covered between the current</p>

22 (Pages 82 to 85)

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1 plan and this plan, I did not see the one at the
2 very bottom of B-18. It begins, Any treatment of
3 teeth, gums or any oral surgery. I did not see
4 that in the current plan.

5 And -- and then on page B-20, it's the
6 sixth bullet under, In addition. It starts with,
7 Resulting from the treatment of weak, strained or
8 flat feet.

9 Those are the ones that I recall.

10 **Q Okay. Any others?**

11 **A** Not that I can recall.

12 **Q Okay. Well, your report doesn't**
13 **specify them. That's why I'm asking.**

14 **A** Right, right.

15 **Q Okay. And, so, that's why I'm asking**
16 **for you to identify.**

17 **Now, you aren't contending that a \$200**
18 **deductible is significant, are you?**

19 **MS. BRAULT:** I'm sorry. Can -- I
20 object to form.

21 **BY MR. ROGACZEWSKI:**

22 **Q I'll take the answer.**

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1 **A** I think when you compare it to zero, I
2 think that's a significant change.

3 **Q You think the increase is significant;**
4 **correct?**

5 **A** I think the increase is significant.

6 **Q My question was a little different.**
7 **Are you contending that a \$200 deductible is**
8 **significant?**

9 **MS. BRAULT:** Objection to form: overly
10 broad.

11 **THE WITNESS:** In the context of what is
12 supposed to be vested benefits, I think that's
13 significant. And I think you can't just look at
14 one piece of a plan and say is that significant or
15 not. I mean, one -- when I look at it, I think
16 you have to look at all of the increases in cost
17 sharing, and that's just one piece of it.

18 **BY MR. ROGACZEWSKI:**

19 **Q Standing alone, is it -- compared to**
20 **the plans that you work with in your business, is**
21 **a \$200 deductible significant?**

22 **MS. BRAULT:** Objection to form: asked

Page 88

1 and answered.

2 **THE WITNESS:** I think I've answered
3 that.

4 **BY MR. ROGACZEWSKI:**

5 **Q I'll take the answer.**

6 **A** It -- it will be significant for some
7 of my plans. I mean, there's -- there's a wide
8 variety of plans out there.

9 **Q Okay. It -- it is not conceptually**
10 **unreasonable to have a \$200 deductible, is it?**

11 **MS. BRAULT:** Objection to relevance.
12 I'm not sure if "conceptually unreasonable" is
13 within the scope of what could be relevant to this
14 case.

15 **THE WITNESS:** I mean, what we're
16 looking at is what is an overall change here and
17 is this reasonable. I think you can't just look
18 at one piece.

19 **BY MR. ROGACZEWSKI:**

20 **Q Okay. A 15 percent co-insurance**
21 **requirement, is that unreasonable?**

22 **MS. BRAULT:** Same objection.

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1 **THE WITNESS:** I would not want that
2 in -- in my plans that I consult for.

3 **BY MR. ROGACZEWSKI:**

4 **Q Do any of your plans have higher**
5 **co-insurance rates that 15 percent?**

6 **A** Oh, 15. I thought you said 50.

7 **Q No, one five. I'm sorry. I apologize.**

8 **A** Most of my multi-employer plans have
9 lower co-insurance rates than that.

10 **Q What about your other -- what about**
11 **your other plans?**

12 **A** It -- it depends on what they've
13 bargained.

14 **Q I mean, you would agree, right, no one**
15 **wants to pay more than they're currently paying;**
16 **correct?**

17 **A** Correct.

18 **Q I mean, the plaintiffs don't want to**
19 **pay more than they're currently paying; CNH**
20 **doesn't want to pay more than it's currently**
21 **paying?**

22 **MS. BRAULT:** I'm going to place an

23 (Pages 86 to 89)

Page 90	Page 92
<p>1 objection to foundation. That's argumentative.</p> <p>2 THE WITNESS: Are you still waiting for</p> <p>3 me to answer something?</p> <p>4 BY MR. ROGACZEWSKI:</p> <p>5 Q I am.</p> <p>6 A And can you ask that again?</p> <p>7 Q I'll just ask a different question.</p> <p>8 On prescription drugs, a \$10 copay for</p> <p>9 generics is not unreasonable, is it?</p> <p>10 A I mean, I -- I have plans with \$10</p> <p>11 co-pays on generic drugs, yes.</p> <p>12 Q Or double that for a three-month supply</p> <p>13 of \$20?</p> <p>14 MS. BRAULT: Objection to the term</p> <p>15 "unreasonable" which you're using. It's overly</p> <p>16 broad and irrelevant.</p> <p>17 THE WITNESS: Not -- you know, I -- I</p> <p>18 have plans that are -- that could be, you know,</p> <p>19 like that, better than that, worse than that.</p> <p>20 BY MR. ROGACZEWSKI:</p> <p>21 Q Now, you don't disagree with John --</p> <p>22 you reviewed John Stahl's expert report; correct?</p>	<p>1 incent people to choose generics?</p> <p>2 A Because with the cost structure that's</p> <p>3 being proposed, you're forcing people who can only</p> <p>4 get a drug that is brand named to pay a much</p> <p>5 higher copay. What I'm saying is there's --</p> <p>6 there's a better way to achieve savings by keeping</p> <p>7 co-pays where they are and telling people that if</p> <p>8 there's a generic equivalent they should get it.</p> <p>9 (Lynne Deposition Exhibit 9 was marked</p> <p>10 for identification and attached to the</p> <p>11 transcript.)</p> <p>12 BY MR. ROGACZEWSKI:</p> <p>13 Q Mr. Lynne, you have in front of you</p> <p>14 what's been marked as Exhibit 9 which has the case</p> <p>15 name at the top, and it's titled Methodology for</p> <p>16 Calculating Estimated Out-of-pocket Costs for</p> <p>17 Highest-Using Participants. It was produced by</p> <p>18 you at page 922.</p> <p>19 Do you recognize this document?</p> <p>20 A Yes.</p> <p>21 Q And what is this document?</p> <p>22 A This is what we produced to show what</p>
Page 91	Page 93
<p>1 A Yes.</p> <p>2 Q You don't disagree with him the</p> <p>3 participants are likely to choose generics more</p> <p>4 often under the current plan -- under the proposed</p> <p>5 plan than the current plan; correct?</p> <p>6 A I would not disagree with that.</p> <p>7 Q In fact, I think you said about one of</p> <p>8 the plans that you worked for, that was one of the</p> <p>9 design goals in one of the recent changes?</p> <p>10 A Yes, although better ways to achieve</p> <p>11 it, I think.</p> <p>12 Q I think -- well, the way you said it,</p> <p>13 it was to force people to use generics; correct?</p> <p>14 A Generic equivalents I don't have a</p> <p>15 problem with.</p> <p>16 Q The proposed plans gives participants</p> <p>17 the ability to choose, whether they want to pay</p> <p>18 more for a brand or less for a generic; correct?</p> <p>19 A Well, so would -- so would that other</p> <p>20 alternative.</p> <p>21 Q I'm sorry. How is it the same to make</p> <p>22 generics mandatory and to use a cost structure to</p>	<p>1 we felt was a worst-case scenario for participant</p> <p>2 cost sharing comparing the two plans.</p> <p>3 Q This is not based on any individual</p> <p>4 participant; correct?</p> <p>5 A Yeah. I mean, we got detailed claim</p> <p>6 files.</p> <p>7 Q But it's not based on a single</p> <p>8 participant; correct?</p> <p>9 A Well, it's based on individual</p> <p>10 participant data and -- and finding the person who</p> <p>11 had the highest utilization of medical claims and</p> <p>12 prescription claims.</p> <p>13 Q Is that the same person?</p> <p>14 A Not necessarily.</p> <p>15 Q So you constructed a hypothetical</p> <p>16 person that had the worst-case scenario on the</p> <p>17 medical side and the prescription drug side?</p> <p>18 A I was simply trying to show what the</p> <p>19 worst-case scenario could be for medical and</p> <p>20 prescription.</p> <p>21 Q So this doesn't represent the</p> <p>22 experience of a single member of the plaintiff</p>

24 (Pages 90 to 93)

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1 class; correct?

2 A Not that I know of.

3 Q All right. No --

4 A I don't think we got data to identify a
5 person, but we were looking for the highest
6 utilization.

7 Q So, as far as you know, no participant
8 actually has the total usage that you use for your
9 baseline; right?

10 MS. BRAULT: You mean for the
11 non-Medicare and the Medicare combined?

12 MR. ROGACZEWSKI: Correct.

13 THE WITNESS: I mean, I don't -- I
14 don't know if it's one person or not for the two
15 things together, but that -- based on the data,
16 that -- that would be the, you know, highest
17 possible number we saw.

18 BY MR. ROGACZEWSKI:

19 Q But you're not aware that any
20 participant actually experienced this total amount
21 between the drugs and the medical benefits;
22 correct?

Page 95

1 A Correct.

2 Q And, statistically speaking, by
3 selecting the maximum, you're selecting an outlier
4 to begin with, aren't you?

5 A As I mentioned before, we -- in -- in
6 this kind of situation where a significant plan
7 change is being proposed, we want to see what --
8 what the worst-case scenario would be because
9 it's -- it's going to impact somebody this way.

10 Q Did you perform a statistical analysis
11 to identify where on the spectrum these data
12 points were relative to the mean, the median?

13 A They're the -- they were the highest
14 utilizing person we could find.

15 Q Did you identify bands of utilization,
16 top 5 percent, meaning -- where --

17 A This would be the top of the band.

18 Q And how many participants have similar
19 exposures --

20 A I don't remember how many were close to
21 these numbers.

22 Q You just -- you just looked for the

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1 highest one?

2 A We were looking at the -- at the
3 worst-case scenario.

4 Q You didn't factor in whether the next
5 person had 10 percent less or 25 percent less or
6 2 percent less?

7 A No, but it would surprise me if there
8 was a big difference between the top one and the
9 next one.

10 Q But you didn't perform a statistical
11 analysis or anything like that, did you, to -- to
12 indicate that?

13 A No. We had done other analyses that
14 had showed averages. We were just trying to get
15 to the worst-case scenario to see what that would
16 be because these people are on fixed incomes.

17 Q There's nothing in your report that
18 shows the distribution of --

19 A No.

20 Q -- of exposures; right?

21 A No.

22 Q Under the drug -- under the drug

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1 portion you say that you modeled the distribution
2 between generic and brand and mail and retail.

3 What does that mean?

4 A The data was not specific enough to
5 identify -- it did not identify generic, brand,
6 retail, mail. We just estimated what it was
7 because we could see what the total copay was and
8 how many prescriptions there was. So we just --
9 we looked at what the copay was per prescription
10 depending on whether it was brand, generic,
11 retail, mail and -- and -- and made our best
12 estimate.

13 Q And how did you make those estimates?

14 A Just based on what we see with retiree
15 groups in general and their -- how often they use
16 generic versus brand and retail versus mail.

17 Q Did you look at the actual -- did --
18 did you consider the usage patterns of this
19 particular class of retirees?

20 A I mean, we -- we had overall data, so I
21 believe we did -- we factored that in.

22 Q You looked at their past usage?

25 (Pages 94 to 97)

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Page 98	Page 100
<p>1 A There were some reports from Express 2 Scripts that -- that we had access to. 3 Q That had data about -- that broke out 4 their actual usage, not projections, but actual 5 usage under the -- under the current plan? 6 A Overall, yeah. 7 Q Did you factor in to your model whether 8 they would use more generics under the proposed 9 plan than the current plan? 10 A I don't think we assumed any shift 11 because we wanted the -- the numbers to be a 12 consistent assumption, so I don't -- 13 Q Even though -- 14 A -- I don't -- 15 Q (Indicating). 16 A I don't believe we did. 17 Q Did you consider the impact of the 18 Affordable Care Act on users' drug costs? 19 A Well, we -- we model it on the -- on 20 the current Part D benefit, the standard benefit. 21 Q Okay. You would agree that both of 22 those issues would lower the number if you had</p>	<p>1 Q Now, under the current plan, those 2 would have been co-pays exclusively; correct? 3 A Right. 4 Q You assumed all services were done in 5 network; right? 6 A I -- yeah, I did because that was -- 7 that seemed to be what the -- the file was telling 8 us. 9 Q Yeah. I'm not questioning that. I'm 10 just -- 11 A Yeah. 12 Q -- confirming that. 13 So this person utilized approximately 14 65 instances of medical benefits under the current 15 plan; correct? 16 A Right. 17 Q And do you have any -- have you 18 performed any analysis on the claims data to 19 identify whether -- how typical that level of -- 20 that utilization is? 21 A We were not trying to find a typical 22 person. We were trying to find the person who</p>
Page 99	Page 101
<p>1 factored them in, wouldn't it? 2 A Are you saying if they used more 3 generic drugs -- 4 Q As one -- 5 A -- would it lower the cost? 6 Q Correct. 7 A If they did, it would. 8 Q And you said before you didn't disagree 9 they're likely to use more generics under the 10 proposed plan than the current plan; correct? 11 A That's true. 12 Q And the Affordable Care Act would also 13 reduce the cost in the future; correct? 14 A It does; although, it reduces the -- 15 the brand a little more quickly than generics, so 16 I'm not sure that's -- in the near future, I'm not 17 sure that would really have that much of an 18 impact. 19 Q Looking at the medical experience of 20 the person that you selected, you found that 21 out-of-pocket costs were \$665; correct? 22 A Yes.</p>	<p>1 used the most health care to see how bad it would 2 get for them. 3 Q You didn't consider the person -- you 4 didn't consider the lowest user; right? 5 A Well, that wouldn't give us the 6 worst-case scenario, so, no, I didn't. 7 Q No. But it would give you the 8 best-case scenario, wouldn't it? 9 A Yes. 10 Q You doubled the amount because the 11 co-pay doubles, right -- 12 A Right. 13 Q -- to get to 1330? 14 And what did you do -- did you do any 15 analysis to figure out the other part of it, 16 degree of co-insurance as well as the satisfaction 17 of the deductible? 18 A Well, since we were assuming the 19 worst-case scenario, we -- we took the 20 out-of-pocket maximum. 21 Q Okay. You just assumed that? 22 A Well, if somebody is going to the</p>

26 (Pages 98 to 101)

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1 doctor or a professional 66 times, it's likely
2 they have a lot of other expenses.

3 **Q** Okay.

4 **A** So I think that's a reasonable
5 assumption.

6 **Q** Let's talk about placing Medicare
7 eligibles into the non-network plan.

8 Do you understand what I'm referring to
9 when I say that?

10 **A** Uh-huh.

11 **Q** Okay. You say that that creates
12 additional cost shifting under the proposed plan
13 than exists under the current plan; correct?

14 **A** Yes.

15 **Q** Is it your opinion that that amount of
16 cost shifting is significant?

17 **A** Well, I think -- I think it is because
18 they are -- they're in the network plan now which
19 just has co-pays. They would go to a plan that
20 requires a \$250 deductible and then 20 percent
21 co-insurance, so to me that's a significant
22 increase.

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1 **Q** Even in 2022, ten years from now, a
2 Medicare-eligible participant is projected to pay
3 less than \$100 per month for their medical
4 benefits and their premiums; correct?

5 **A** By what year?

6 **Q** 2022.

7 **MS. BRAULT:** You're just asking about
8 premiums now?

9 **MR. ROGACZEWSKI:** And out-of-pocket,
10 but not for drugs because we're talking about the
11 comparison of the network to the non-network.

12 **THE WITNESS:** I would agree with that.

13 **BY MR. ROGACZEWSKI:**

14 **Q** Is that a significant amount?

15 **MS. BRAULT:** Same objection.

16 **THE WITNESS:** (Reviews document.) I
17 don't -- I don't see how you can look at that in
18 isolation. I mean, the -- you have to look at
19 what they would be paying in total for medical and
20 prescription because that's what they have now, so
21 it's -- and that was -- it may be less than a
22 hundred dollars a month for medical, but that's

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1 not all they have in terms of cost.

2 **BY MR. ROGACZEWSKI:**

3 **Q** No, but your opinion, though, is that
4 moving them from the network plan to the
5 non-network plan for medical benefits is --
6 creates additional cost shifting, and I'm trying
7 to understand whether or not it's your opinion
8 that that's a significant amount of cost shifting
9 or not.

10 **A** Well, to go from under \$10 a month to
11 close to 100 a month is significant.

12 **Q** Over a ten-year period?

13 **A** Well, I think we have to compare it to
14 where they otherwise would have been, and that's
15 the whole point.

16 **Q** What about comparing them to the
17 network plan under the proposed plan? Did you --
18 did you do that comparison?

19 **A** But the Medicare people are not going
20 to be in the proposed -- in the network plan.

21 **Q** No, I understand that.

22 **Your opinion is that moving them from**

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1 the network plan to the non-network plan creates
2 additional cost shifting, and I'm trying to
3 understand whether or not you were looking at the
4 comparison of the current network plan to the
5 proposed non-network --

6 **A** Yes.

7 **Q** -- plan, or if you looked at the
8 comparison of the proposed network plan to the
9 proposed non-network plan.

10 **A** I was looking at what they would
11 experience, which is the current network plan
12 compared to the proposed non-network plan, because
13 that's what's going to happen to the Medicare
14 population.

15 **Q** You identify in your report a number of
16 alternatives that CNH could have pursued on the
17 prescription drug side for Medicare eligibles;
18 correct?

19 **A** Well, some -- some were for all
20 participants and some were specifically for
21 Medicare eligible.

22 **Q** Could you point to me the ones that are

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 106</p> <p>1 not --</p> <p>2 A Well, the -- the EGWP would only be for</p> <p>3 Medicare eligible.</p> <p>4 (The Reporter asks for clarification.)</p> <p>5 THE WITNESS: Employer Group Waiver</p> <p>6 Plan. The acronym is EGWP.</p> <p>7 BY MR. ROGACZEWSKI:</p> <p>8 Q So paragraph 31 says -- just tell me if</p> <p>9 I'm reading this incorrectly -- the proposed plan</p> <p>10 for Medicare eligible retirees would require the</p> <p>11 retiree to purchase an individual Part D</p> <p>12 prescription drug plan at a significant cost,</p> <p>13 while completely eliminating the cost to CNH;</p> <p>14 correct?</p> <p>15 That's your opinion; right?</p> <p>16 A Yes.</p> <p>17 Q An alternative would to be consider a</p> <p>18 number of programs and plan revisions that would</p> <p>19 significantly reduce the cost to CNH while</p> <p>20 continuing to maintain comparable benefits for</p> <p>21 retirees.</p> <p>22 And that's also your opinion; correct?</p>	<p style="text-align: right;">Page 108</p> <p>1 correct?</p> <p>2 A The first three, A, B and C, could also</p> <p>3 be implemented for pre-Medicare. I was focusing</p> <p>4 on the Medicare because that was the big -- to me</p> <p>5 that was the big change proposed by CNH. But you</p> <p>6 could do A, B and C, also, for the pre-Medicare</p> <p>7 group. D is only some -- D is the only one you</p> <p>8 can do for the Medicare group.</p> <p>9 Q Would it be fair to read your report as</p> <p>10 suggesting that the alternatives in A through D</p> <p>11 would satisfy the Reese standard?</p> <p>12 MS. BRAULT: You're just talking about</p> <p>13 the prescription drug piece of it?</p> <p>14 MR. ROGACZEWSKI: I'm saying any of the</p> <p>15 alternatives that Mr. --</p> <p>16 MS. BRAULT: I'm going to --</p> <p>17 MR. ROGACZEWSKI: -- Lynne sets forth.</p> <p>18 MS. BRAULT: I'm going to make an</p> <p>19 objection. I think you're asking him questions</p> <p>20 that are beyond his request for opinions.</p> <p>21 THE WITNESS: I could not bear to</p> <p>22 imagine what would satisfy Judge Sutton.</p>
<p style="text-align: right;">Page 107</p> <p>1 A Yes.</p> <p>2 Q And that's an alternative to what the</p> <p>3 proposed plan is for Medicare eligibles on</p> <p>4 prescription drugs; correct?</p> <p>5 A You mean the proposed nonplan.</p> <p>6 Q I'm using the proposed plan.</p> <p>7 A There is no plan.</p> <p>8 Q Well, there is a plan.</p> <p>9 A There's not a plan.</p> <p>10 MS. BRAULT: The proposed plan does not</p> <p>11 cover prescription drugs.</p> <p>12 THE WITNESS: The proposed plan is no</p> <p>13 plan provided by the employer, but what -- I mean,</p> <p>14 what I'm saying is that there were alternatives</p> <p>15 that could have been pursued to provide some</p> <p>16 savings instead of completely doing away with the</p> <p>17 plan.</p> <p>18 BY MR. ROGACZEWSKI:</p> <p>19 Q Those are A, B, C and D; correct?</p> <p>20 A Correct.</p> <p>21 Q And those are alternatives for</p> <p>22 Medicare-eligible retirees and prescription drugs;</p>	<p style="text-align: right;">Page 109</p> <p>1 BY MR. ROGACZEWSKI:</p> <p>2 Q These are alternatives, however, that</p> <p>3 you suggested; correct?</p> <p>4 A Yes.</p> <p>5 Q You wouldn't suggest an alternative</p> <p>6 that would not be permissible, would you?</p> <p>7 MS. BRAULT: Well, I'm going to just</p> <p>8 object by what you mean "permissible."</p> <p>9 THE WITNESS: Yeah. They would be --</p> <p>10 permissible, how do you mean permissible?</p> <p>11 BY MR. ROGACZEWSKI:</p> <p>12 Q Well, the issue in the case right now,</p> <p>13 as you understand it, is what changes CNH is</p> <p>14 allowed to make; correct?</p> <p>15 A Yes.</p> <p>16 Q And it's your opinion that CNH could</p> <p>17 have considered the alternatives outlined in</p> <p>18 paragraph 31; correct?</p> <p>19 A I think they could have, yes.</p> <p>20 Q All right. So it's not -- it -- it --</p> <p>21 it is not fair to consider in your opinion that</p> <p>22 those are -- those are reasonable changes to the</p>

28 (Pages 106 to 109)

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1 benefits?

2 A I think they are reasonable changes.

3 Q Are those the outer bound of what is
4 permissible or reasonable?

5 MS. BRAULT: Same objection.

6 THE WITNESS: I -- I -- I don't know
7 what -- what the court -- how the court will
8 think.

9 BY MR. ROGACZEWSKI:

10 Q I mean, these --

11 A I'm -- I'm just coming up with what I
12 think would have been reasonable alternatives.13 Q But this is not obviously an exclusive
14 list of what would be reasonable changes; correct?15 A I mean, I think at some point you have
16 to look at a -- a -- and I don't know -- if you
17 did all of these and other things, I think you
18 might start going beyond what was reasonable.19 MR. ROGACZEWSKI: Now would actually be
20 a good time for a break.

21 (Recess -- 11:45 a.m.)

22 (After recess -- 12:02 p.m.)

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1 BY MR. ROGACZEWSKI:

2 Q Mr. Lynne, you mentioned earlier that
3 you considered the pensions that class members
4 received; is that correct?

5 A Yes.

6 Q And that's the only form of income that
7 you considered in evaluating the participant's
8 ability to pay for health care; correct?

9 A It is.

10 Q You didn't consider social security or
11 disability income; correct?12 A I didn't have that information, but I
13 did not consider it.14 Q You didn't consider if they had income
15 from other employment; correct?

16 A No.

17 Q You didn't consider any other assets
18 they might have?

19 A No.

20 Q You didn't consider if they had other
21 spending that could be shifted to cover health
22 care benefits; correct?

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1 A Correct.

2 (Lynne Deposition Exhibit 10 was marked
3 for identification and attached to the
4 transcript.)

5 BY MR. ROGACZEWSKI:

6 Q Mr. Lynne, you have in front of you
7 what's been marked as Exhibit 10. It has the case
8 name at the top. It doesn't have a title. It's
9 a -- it appears to be a spreadsheet. It was
10 produced by you at 921.

11 Do you recognize this document?

12 A Yes.

13 Q And what is this document?

14 A It is the end product of analysis that
15 I had my associate Bill Hudec do to sort through
16 the pension data file we got and put -- put the
17 pensioners in different categories and see how
18 many there were and -- and -- excuse me -- and
19 what the -- what the median was -- median pension.20 Q And I think you said earlier that you
21 received a file from plaintiffs' counsel that had
22 pension data on it. Am I remembering that

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1 correctly?

2 A Yes.

3 Q Is that the data that Mr. Hudec used --

4 A Yes.

5 Q -- to create Exhibit 10?

6 A Yes.

7 Q You see in the upper left-hand corner
8 it says, Redacted, and there's a dark strip. Do
9 you see that?

10 A Uh-huh.

11 Q Do you -- do you know what is behind
12 the redaction?

13 A No.

14 Q Did you redact something from this
15 document?

16 A I don't recall doing that.

17 Q Do you remember what would be there if
18 it wasn't redacted?19 A No, I -- but it was -- it was a
20 heading -- I mean, it would have been a heading
21 that had the -- the group split out without
22 reference to whether they were disabled. And --

29 (Pages 110 to 113)

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<p style="text-align: right;">Page 114</p> <p>1 and the bottom is -- is all -- it's all the same</p> <p>2 group of people but splitting out the disabled</p> <p>3 population separately, whereas, here they're just</p> <p>4 in each of those categories as they would fall,</p> <p>5 you know, age.</p> <p>6 Q So it's your understanding that a</p> <p>7 heading similar to the one halfway down, quote,</p> <p>8 Additional Split for Disabled Retirees, open</p> <p>9 paren, 5/24/2013, close paren, is behind the</p> <p>10 redaction?</p> <p>11 A To the best of my recollection, yes.</p> <p>12 Q When you produced documents in response</p> <p>13 to CNH's subpoena, what was the logistical process</p> <p>14 that you went through to produce them?</p> <p>15 A I'm not sure what you mean.</p> <p>16 Q Okay. How did the documents get from</p> <p>17 you to me?</p> <p>18 A They went through counsel.</p> <p>19 Q Okay. Did you instruct counsel to</p> <p>20 redact anything from the documents that you were</p> <p>21 providing for production?</p> <p>22 A No. Again, not that I recall.</p>	<p style="text-align: right;">Page 116</p> <p>1 A No.</p> <p>2 Q What about Ms. Calzetta?</p> <p>3 A No.</p> <p>4 Q Okay. So Mr. Hudec is not related to</p> <p>5 an Alfred Hudec?</p> <p>6 A I just noticed -- but that's Hudec.</p> <p>7 Q Okay.</p> <p>8 A Bill is Hudak (sic).</p> <p>9 Q Ah, very good.</p> <p>10 Any other source for the data in</p> <p>11 Exhibit 10 besides what was provided by</p> <p>12 plaintiffs' counsel?</p> <p>13 A No.</p> <p>14 Q All right. I'm going to show you what</p> <p>15 I've -- what's being marked as Exhibit 11, which</p> <p>16 is an electronic file that was produced by you.</p> <p>17 MS. BRAULT: Can we -- go ahead.</p> <p>18 Before you turn his attention to that, can we go</p> <p>19 off the record for one second?</p> <p>20 MR. ROGACZEWSKI: Sure.</p> <p>21 (Discussion off the Record.)</p> <p>22 (Recess -- 12:08 p.m.)</p>
<p style="text-align: right;">Page 115</p> <p>1 Q Were you responsible for transmitting</p> <p>2 the documents to counsel?</p> <p>3 A Well, my -- I think technically I had</p> <p>4 Bill, who was my, you know, technical person, put</p> <p>5 them all in a -- in a PDF file. I mean, I</p> <p>6 instructed him which files to -- to put in and</p> <p>7 then they were -- they were sent to counsel.</p> <p>8 MR. ROGACZEWSKI: I'll ask -- I'd ask</p> <p>9 Ms. Brault if she knows --</p> <p>10 MS. BRAULT: Do you have WiFi?</p> <p>11 THE WITNESS: Yes.</p> <p>12 MS. BRAULT: You know, maybe as you</p> <p>13 ask, I'll see if I can -- I don't know the answer</p> <p>14 off the top of my head, but maybe I'll be able to</p> <p>15 provide it as we go on.</p> <p>16 MR. ROGACZEWSKI: Thank you.</p> <p>17 BY MR. ROGACZEWSKI:</p> <p>18 Q Mr. Lynne, do you have any</p> <p>19 relationships with any members of the plaintiff</p> <p>20 class in this case?</p> <p>21 A No.</p> <p>22 Q Does Mr. Hudec?</p>	<p style="text-align: right;">Page 117</p> <p>1 (After recess -- 12:10 p.m.)</p> <p>2 (Lynne Deposition Exhibit 11 was marked</p> <p>3 for identification and attached to the</p> <p>4 transcript.)</p> <p>5 BY MR. ROGACZEWSKI:</p> <p>6 Q So, Mr. Lynne, up on the screen is</p> <p>7 what's marked as Deposition Exhibit 11. It is a</p> <p>8 Microsoft Excel workbook titled IPO -- Pension</p> <p>9 Data -- 130812 - on CNH_slist.xlsx.</p> <p>10 And I'll represent that it was produced</p> <p>11 by you in response to the subpoena.</p> <p>12 MR. ROGACZEWSKI: And I'll also state</p> <p>13 on the record that the only thing I have done to</p> <p>14 this file is I have extracted it from the disk on</p> <p>15 which it was provided, loaded it onto my laptop,</p> <p>16 and I have added to the document title Lynne</p> <p>17 Deposition Exhibit 11.</p> <p>18 And I also have thumb drives on which I</p> <p>19 will provide the exhibit to the court reporter and</p> <p>20 to Ms. Brault.</p> <p>21 BY MR. ROGACZEWSKI:</p> <p>22 Q And using a digital exhibit often</p>

30 (Pages 114 to 117)

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1 requires a lot more cooperation between the --
2 between the witness and the questioner, as well as
3 opposing counsel. So if you want me to navigate
4 any place in particular, direct me to do so, and I
5 will do so. If you want me to zoom it in, I'm
6 happy to zoom it in. I did want to at least open
7 it up, though, as -- as it opened as we received
8 it.

9 Looking at Exhibit 11, Mr. Lynne, do
10 you recognize this document?

11 A Yes.

12 Q And what is this document?

13 A It's an Excel file of pensioners with
14 their pension -- CNH pensioners with their pension
15 amounts.

16 Q And how did you acquire this document?

17 A I received it from counsel.

18 Q You didn't create this document;
19 correct?

20 A No.

21 Q And, in fact, if you go over to the
22 file tab. In the properties you see that Roger

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1 McClow authored it; correct?

2 A I received it from Roger.

3 Q How many times have you met Mr. McClow?

4 A Well, we -- he is one of the trustees
5 on Middletown Works VEBA, so I'm not sure how many
6 times that makes, but we have quarterly meetings
7 for the last four or five years.

8 Q Is that how you met Mr. McClow?

9 A Yes.

10 Q Going over to column N, which has a
11 heading that's in cell N1 that says, Bates Number,
12 do you see that?

13 A Yes.

14 Q In that column there are a series of
15 numbers that begin with the prefix CNHA.

16 Do you see that?

17 A Yes.

18 Q Do you know what those numbers
19 represent?

20 A No.

21 Q Did you do anything to audit the data
22 in this spreadsheet?

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1 A No.

2 Q Did you ask any questions about the
3 spreadsheet?

4 A Well, we just -- we wanted to make sure
5 we understood what the -- what the amount --
6 amounts were and when the pension amount changed.
7 You can see that, you know, there's a -- an amount
8 to age 62, and then the basic pension we wanted to
9 make sure we understood that -- that the pension
10 age 62 is what they -- they got when they were
11 first retired if they were under 62 and got that
12 to age 62 and then the basic pension after -- at
13 age 60 -- starting at age 62.

14 Q So just so the record is clear, you're
15 referring to column L of the worksheet, which
16 is -- has a heading of Pension To Age 62 in cell
17 L1, that you understand -- you understood that to
18 be the pension that a class member would receive
19 from retirement until age 62; is that my -- am I
20 summarizing what you just said correctly?

21 A Yeah. Can you -- can you go to
22 further -- are there further columns on the right?

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1 Q Yes. (Indicating).

2 A Okay.

3 Q Any particular column?

4 A No.

5 Q Okay. And then in the amount -- in the
6 column that's headed K with the title in K1 of
7 Basic Pension, you understood that to be the
8 pension that a class member would receive when --
9 after they turn what age?

10 A Sixty-two.

11 Q Okay. And did you ask any other
12 questions about Exhibit 11?

13 A I don't recall asking the other
14 question.

15 Q But then you -- you used the data in
16 Exhibit 11 to perform your analysis in coming to
17 your opinions; correct?

18 A To compare costs with pension.

19 (Lynne Deposition Exhibit 12 was marked
20 for identification and attached to the
21 transcript.)

22 BY MR. ROGACZEWSKI:

31 (Pages 118 to 121)

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<p style="text-align: right;">Page 122</p> <p>1 Q So you have in front of you, Mr. Lynne, 2 what's been marked as Exhibit 12. It's a document 3 entitled Plaintiff Reese's Responses To CNH's 4 Second Set Of Interrogatories To Plaintiffs. 5 Have you seen this document before? 6 A I -- I honestly I may have, but it's 7 not coming back to me. 8 Q Have you met Mr. Reese? 9 A No. 10 Q Do you understand he's the lead 11 plaintiff in this case? 12 A Yes. 13 Q Okay. So I'm going to navigate the 14 workbook to find Mr. Reese who is in row 836 on 15 Exhibit 11. 16 Now, Mr. Reese is over age 65; correct? 17 A Is F date of birth? 18 Q Yes, the data in cell F, 836, appears 19 to be Mr. Reese' date of birth. 20 A 4/3/1948? 21 Q Correct. 22 A Okay. So he turned 65 last April.</p>	<p style="text-align: right;">Page 124</p> <p>1 said he did not see, and asking him to make 2 comparisons now. I think that that's 3 argumentative. 4 THE WITNESS: I see that it says that, 5 yes. 6 BY MR. ROGACZEWSKI: 7 Q You would agree that Mr. Reese also has 8 as of, at least, 2012, over \$30,000 of SSDI; 9 correct? 10 A According to this, yes. 11 Q And annuity income of over \$15,000; 12 correct? 13 A That's what it says here. 14 Q Do you have any reason to doubt 15 Mr. Reese's answers to the interrogatory? 16 A No. 17 MS. BRAULT: I just want to place an 18 objection. I think you said SSDI, and the 19 question was for social security or disability 20 income, just to be clear. I don't think that 21 Mr. Reese was disabled. 22 MR. ROGACZEWSKI: I was not</p>
<p style="text-align: right;">Page 123</p> <p>1 Q And according to Exhibit 11 -- and I'm 2 going over to cell K, 36, you assumed he had a 3 pension of about \$14,775; correct? 4 A You're going to make me do this again. 5 It would be about 14,800. 6 Q Now, I'll ask you to look at page 3 of 7 Exhibit 12. In Mr. Reese's response to 8 interrogatory 14, it asks about his -- his income. 9 And according to Mr. Reese, his pension in 2012 is 10 about \$2,000 greater than what you estimated; 11 correct? 12 A Greater than what we were provided, 13 yes. 14 Q I understand. Greater than the amount 15 that you would have considered his pension to be; 16 correct? 17 A Yes. 18 Q And he also has an additional pension 19 of over \$25,000? 20 MS. BRAULT: I'm just going to place an 21 objection to the extent that you're having him 22 refer to the answers to interrogatories, which he</p>	<p style="text-align: right;">Page 125</p> <p>1 suggesting -- I apologize -- 2 MS. BRAULT: No, no, just wanted to 3 make sure we were clear. 4 MR. ROGACZEWSKI: I didn't mean to 5 suggest that. 6 BY MR. ROGACZEWSKI: 7 Q Each of these additional sources of 8 income would factor into Mr. Reese's ability to 9 pay for health care, wouldn't they? 10 A They would along with all other 11 expenses. 12 Q Sure. But you didn't consider any of 13 these other sources of income; correct? 14 A I did not because I didn't have them. 15 Q If you had them, would you have used 16 them? 17 A We were -- we were just trying to 18 compare over time what would happen with expenses 19 of the benefit they got from CNH with the pension 20 they got from CNH. I thought that was a 21 reasonable comparison to look at the impact over 22 time of -- of the potential change. I mean, I --</p>

32 (Pages 122 to 125)

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1 people are going to have, you know, different
 2 other situations in their lives, but this is what
 3 we had to compare.
 4 **Q** But you would not disagree, though,
 5 that these other sources of income can provide
 6 Mr. Reese with a greater ability to pay for health
 7 care than his pension from CNH?
 8 MS. BRAULT: Objection: argumentative.
 9 THE WITNESS: Well, the additional
 10 income would certainly be there to pay for the
 11 expenses, but I would have no idea whether he was
 12 a special case or -- no pun intended -- or
 13 whether, you know, all the other folks would have
 14 these other sources of income.
 15 BY MR. ROGACZEWSKI:
 16 **Q** You're not saying it's irrelevant,
 17 though?
 18 A For one person that income would factor
 19 into affording anything, yes.
 20 **Q** Do you understand this to be a class
 21 action, Mr. Lynne?
 22 A Yes.

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1 **Q** And do you understand that Mr. Reese is
 2 a class representative?
 3 A Yes.
 4 **Q** Do you have an understanding as to what
 5 that means?
 6 A That he is a member of the class.
 7 **Q** Your understanding isn't that he's
 8 representative of the class in any particular way?
 9 A Well, for instance, I don't know
 10 whether other members of the class would have all
 11 of these other -- would have other sources like he
 12 would other than the Reese pension.
 13 **Q** All right. You would agree, though,
 14 that Reese's CNH pension -- his income is greater
 15 than his CNH pension?
 16 A Reading this, yes.
 17 (Lynne Deposition Exhibit 13 was marked
 18 for identification and attached to the
 19 transcript.)
 20 BY MR. ROGACZEWSKI:
 21 **Q** All right. You have in front of you
 22 what's been marked as Exhibit 13, which is a

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1 document entitled Plaintiff Cichanofsky's
 2 Responses To CNH's Second Set Of Interrogatories
 3 To Plaintiffs.
 4 Have you seen this before?
 5 A I don't recall seeing it.
 6 **Q** If you had reviewed it, it would be
 7 listed in your expert report; correct?
 8 A I -- I can't remember everything that I
 9 have -- like every document I had in there.
 10 **Q** But if you relied upon it -- I think
 11 you even said if you had reviewed something and
 12 you didn't rely on it, you would have provided it
 13 in discovery; right?
 14 A I mean, if we received a document, it
 15 would be listed there, but --
 16 **Q** Okay.
 17 A -- I -- I mean, I can't claim to have
 18 read every word of every document.
 19 **Q** But if you had received it, it would be
 20 listed in your expert report in Exhibit 1;
 21 correct?
 22 MS. BRAULT: Excuse me. I think what

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1 he said was if he relied upon it, it was listed in
 2 his expert report; and if he reviewed it, it was
 3 produced pursuant to the subpoena. There's not an
 4 exact match there, so mischaracterization of the
 5 testimony.
 6 BY MR. ROGACZEWSKI:
 7 **Q** Is that --
 8 A Yes, that's correct.
 9 **Q** Okay. Have you met Mr. Cichanofsky?
 10 A No.
 11 **Q** Do you understand him to be a plaintiff
 12 in the case?
 13 A I mean, before now, I -- I don't -- I
 14 would not have known the name.
 15 **Q** Okay. You're not aware he's also a
 16 class representative?
 17 A I mean, honestly, I just knew the name
 18 Reese. I don't -- I didn't realize all the other
 19 names.
 20 **Q** Okay. I have navigated to row 864 of
 21 Exhibit 11 which is the data for Mr. Cichanofsky.
 22 Mr. Cichanofsky is -- is what age?

33 (Pages 126 to 129)

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<p>1 A Fifty-eight.</p> <p>2 Q So he's under 62; correct?</p> <p>3 A Right.</p> <p>4 Q So you would have presumed his pension</p> <p>5 was \$28,560; correct?</p> <p>6 MS. BRAULT: You may want to scroll</p> <p>7 across the . . .</p> <p>8 THE WITNESS: Yes. That's -- and</p> <p>9 that's the pre-62 column, column L.</p> <p>10 BY MR. ROGACZEWSKI:</p> <p>11 Q Column L, right. Unfortunately,</p> <p>12 whoever did this spreadsheet didn't have the</p> <p>13 header row.</p> <p>14 A Yeah. 28,560.</p> <p>15 Q Now I'm going to ask you to look at</p> <p>16 page 3 of Exhibit 13. And, in fact, that is</p> <p>17 Mr. Cichanofsky's pension, isn't it?</p> <p>18 A Yes.</p> <p>19 Q Mr. Cichanofsky also had an additional</p> <p>20 \$10,000 in income from another job; correct?</p> <p>21 A That's what it says here, yes.</p> <p>22 Q And like Mr. Reese, that -- that income</p>	<p>1 Q On Exhibit 11, Mr. Miller, who is in</p> <p>2 row 1917 -- Mr. Miller is over age 65; correct?</p> <p>3 A Yes.</p> <p>4 Q And, so, according to this chart, you</p> <p>5 would have predicted his pension to be about \$975</p> <p>6 a month; correct?</p> <p>7 A Yes.</p> <p>8 Q Now, looking at page 3 of Mr. Miller's</p> <p>9 interrogatory responses, you see his pension is</p> <p>10 actually a little higher than that; correct?</p> <p>11 A Yes.</p> <p>12 Q About \$125 greater per month?</p> <p>13 A Yes.</p> <p>14 Q And he also has social security or</p> <p>15 disability income that is twice as much as his</p> <p>16 pension; right?</p> <p>17 A That's what it says here.</p> <p>18 Q And that's income that you didn't</p> <p>19 consider; correct?</p> <p>20 A For our comparison, that's correct.</p> <p>21 (Lynne Deposition Exhibit 15 was marked</p> <p>22 for identification and attached to the</p>
Page 131	Page 133
<p>1 demonstrates that he has greater income than</p> <p>2 simply his pension; correct?</p> <p>3 A Yes.</p> <p>4 (Lynne Deposition Exhibit 14 was marked</p> <p>5 for identification and attached to the</p> <p>6 transcript.)</p> <p>7 BY MR. ROGACZEWSKI:</p> <p>8 Q You have in front of you what's been</p> <p>9 marked as Exhibit 14. It's a document entitled</p> <p>10 Plaintiff Miller's Response To CNH's Second Set Of</p> <p>11 Interrogatories To Plaintiffs.</p> <p>12 Have you seen this document before,</p> <p>13 Mr. Lynne?</p> <p>14 A I don't recall if I have.</p> <p>15 Q Have you met Mr. Miller?</p> <p>16 A No, I have not.</p> <p>17 Q Do you understand that he is another</p> <p>18 plaintiff in this case?</p> <p>19 A Yes.</p> <p>20 Q Do you understand he is another class</p> <p>21 representative in this case?</p> <p>22 A Yes, based on the title up here.</p>	<p>1 transcript.)</p> <p>2 BY MR. ROGACZEWSKI:</p> <p>3 Q You have in front of you what's been</p> <p>4 marked as Exhibit 15 which is a document entitled</p> <p>5 Plaintiff Nowlin's Responses To CNH's Second Set</p> <p>6 Of Interrogatories To Plaintiffs.</p> <p>7 Do you recall seeing this document</p> <p>8 before?</p> <p>9 A I don't recall that I have.</p> <p>10 Q Have you met Mr. Nowlin?</p> <p>11 A No.</p> <p>12 Q Do you understand he is the fourth and</p> <p>13 final plaintiff in this case?</p> <p>14 A Yes.</p> <p>15 Q And that he's also a class</p> <p>16 representative?</p> <p>17 A Yes.</p> <p>18 Q Going to Exhibit 11, he's at row 721.</p> <p>19 Mr. Nowlin is over age 65; correct?</p> <p>20 A Yes.</p> <p>21 Q And you would have predicted his</p> <p>22 pension to be about \$310 a month; correct?</p>

34 (Pages 130 to 133)

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1 A Yes.
 2 Q Looking at page 3 of Exhibit 15,
 3 Mr. Nowlin's pension is actually about \$50 higher
 4 than that; correct?
 5 A Yes.
 6 Q And he has two additional pensions,
 7 albeit small, but two additional pensions that
 8 total about 250 a month; correct?
 9 A Yes.
 10 Q And he has social security or
 11 disability income of approximately \$1,900 a month;
 12 correct?
 13 A Yes.
 14 Q And other employment that at least
 15 earned him \$30,000 -- almost \$30,000 over the
 16 course of 2012; correct?
 17 A Yes.
 18 Q And that's -- none of those sources of
 19 income were considered by you in your analysis;
 20 correct?
 21 A No.
 22 Q Exhibit 11, is this the most up-to-date

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1 pension information that you've received from
 2 plaintiffs' counsel?
 3 A Yes, I believe we only received one
 4 file.
 5 Q So this is the pension data -- does --
 6 is my -- would I understand correctly that this is
 7 pension data of approximately August 13 -- I'm
 8 sorry, August 12th, 2013?
 9 A I -- I don't -- I don't recall when I
 10 got them exactly.
 11 Q You didn't name this file, I take it?
 12 MS. BRAULT: I'm just going to object
 13 to -- to foundation. I --
 14 MR. ROGACZEWSKI: He either knows or he
 15 doesn't.
 16 THE WITNESS: I don't know.
 17 MS. BRAULT: That's not an obvious
 18 indication of when the file was created or
 19 transferred to him just because there's a date
 20 code in the title, and I'm just going to object to
 21 the implication.
 22 THE WITNESS: I don't know.

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1 BY MR. ROGACZEWSKI:
 2 Q Okay. And you're not aware of any more
 3 recent pension data; correct?
 4 A No.
 5 Q Okay. And this is pension data that's
 6 used in your September 24th report; correct?
 7 A Yes.
 8 Q Okay.
 9 (Lynne Deposition Exhibit 16 was marked
 10 for identification and attached to the
 11 transcript.)
 12 BY MR. ROGACZEWSKI:
 13 Q Before I move to this exhibit,
 14 Mr. Lynne, I want to go back to Exhibits 4 and 5.
 15 And if you could turn to page 24 of Exhibit 4, and
 16 the third to last page of Exhibit 5. It's not
 17 numbered in the -- it's not numbered in Exhibit 5.
 18 The compensation payable for the
 19 preparation of your initial expert report
 20 increased by approximately \$4,500 between June 3rd
 21 and September 24th; is that correct?
 22 A Yes.

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1 Q How many additional hours were spent by
 2 the -- by the individuals who worked on it?
 3 A Well, the hours are the same, and I --
 4 I -- all I can -- all I can figure is that I
 5 changed the number at the bottom and neglected to
 6 change the number of hours.
 7 Q Well, that's what I gathered and that's
 8 why I'm asking. But, no, I'm just -- I'm asking
 9 what -- what -- you know, for an update of the
 10 hours.
 11 A That's what happened when you work from
 12 a document and don't update on it.
 13 Q Believe me, I understand.
 14 A Hold on, please. Looks like about 19
 15 hours.
 16 Q Do you know how it broke out between
 17 Mr. -- Mr. Hudec, Ms. Calzetta and yourself?
 18 A I believe it was predominantly my time,
 19 but I don't know the breakout.
 20 Q Are you the author of any articles in
 21 the last ten years?
 22 A I -- I don't believe so.

35 (Pages 134 to 137)

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1 Q When were you asked to prepare a
2 rebuttal report in this case?
3 A To the best of my recollection, it was
4 around the -- the first of December. I -- I
5 don't -- I don't remember exactly.
6 Q And just as we talked earlier about the
7 scope of your engagement for your principal expert
8 report, what was the scope of the assignment for
9 the rebuttal expert report?
10 A To review the -- the October reports of
11 Mr. Macey and Mr. Stahl and to make rebuttal to
12 some of their claims, statements, opinions.
13 Q Were you given any direction to focus
14 on specific parts of either Mr. Macey's or
15 Mr. Stahl's reports?
16 A No. I was given their reports, and I
17 went through it and looked at some things that I
18 thought I could object to, and that's -- that's
19 what guided this -- this rebuttal report.
20 Q And I think you said earlier that you
21 asked for materials about some of the
22 circumstances that Mr. Macey described in his

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1 report; is that correct?
2 A Yes.
3 Q Did you do that when you first got the
4 engagement, or was it in the middle of the
5 engagement?
6 A In the middle of the rebuttal
7 engagement?
8 Q Correct.
9 A I mean, it was -- it was sort of
10 throughout the rebuttal engagement as I was going
11 through piece by piece of -- of what Mr. Macey and
12 Mr. Stahl said. There were different points where
13 I was collecting information.
14 Q So how would you describe the process
15 that you went through in creating your rebuttal
16 report?
17 A I -- I went through their statements,
18 looked at things that I wanted to comment on.
19 Some of it I just was able to use information
20 that -- you know, that I already had or from my
21 own experience, and then I had discussions with --
22 with counsel about --

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1 MS. BRAULT: I'm going to caution you
2 not to -- not to talk about discussions with
3 counsel to the extent that they are work product.
4 THE WITNESS: Well, there -- there was
5 information that I felt perhaps could be more
6 easily obtained referencing these other cases.
7 BY MR. ROGACZEWSKI:
8 Q Did plaintiffs' counsel disclose any
9 facts to you about the situations that you were
10 asking about?
11 A You mean other than the -- the
12 documents provided?
13 Q Correct.
14 MS. BRAULT: That you relied upon.
15 You're only allowed to ask about facts
16 that he relied upon.
17 THE WITNESS: Not -- not that I recall.
18 I was given the name of someone to -- to talk to
19 regarding one of these cases, but I believe it
20 was -- it was primarily from -- from --
21 BY MR. ROGACZEWSKI:
22 Q You don't --

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1 A (Witness reviews document.) I mean,
2 I'm not sure I can point to any specific thing.
3 Q Okay. So you have in front of you --
4 in fact, you're looking at it right now -- what's
5 been marked as Exhibit 16, which is titled
6 Plaintiffs' Expert Rebuttal Report. It's authored
7 by you, and it's dated January 15th, 2014.
8 Have you seen this document before?
9 A Yes.
10 Q What is this document?
11 A It's the report that I recently
12 prepared.
13 Q Okay. Now, you say in this rebuttal
14 report that none of your clients have ever made
15 changes as drastic as those proposed by CNH;
16 correct?
17 A Yes.
18 Q And CNH is not one of your clients;
19 correct?
20 A Correct.
21 Q And you understand that CNH made the
22 changes in the proposed plan with agreement of the

36 (Pages 138 to 141)

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1 UAW in 2005; correct?

2 MS. BRAULT: I'm going to place an
3 objection. I object to the use of your term
4 "change" because I think it's overly broad.

5 THE WITNESS: It -- it is my
6 understanding that the proposed plan was put in
7 place for certain CNH employees and retirees, but
8 that there was -- there were additional items that
9 were provided to them as a result of that
10 implementation.

11 BY MR. ROGACZEWSKI:

12 Q In terms of the health plan design and
13 the health plan provisions, what CNH is proposing
14 here has, in fact, already been done for other
15 retirees at CNH, hasn't it?

16 A That's my understanding, yes.

17 Q You also say it's difficult to make
18 comparisons between different situations that
19 arise out of different industries and
20 circumstances and that every situation has its own
21 fact pattern.

22 Have I stated that opinion correctly?

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1 A Yes.

2 Q Isn't that what someone in your field
3 does, compare benefit plans across industries?

4 A Yes.

5 Q So why is it difficult?

6 A Because there are different situations
7 with different employers, things might be
8 bargaining, not bargaining. There are other --
9 other than just looking at the benefit plans, in
10 some of these instances there were -- there were
11 other things agreed to outside of the health
12 benefit plans that were part of -- as I understood
13 it, part of the negotiations or a settlement.

14 So, I mean, you have to look at many
15 different things other than just comparing benefit
16 plans.

17 Q Are you -- are you a member of the
18 American Academy of Actuaries?

19 A No.

20 Q Okay. Do you -- do you subscribe to
21 the academy's methodologies?

22 A Generally.

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1 (Lynne Deposition Exhibit 17 was marked
2 for identification and attached to the
3 transcript.)

4 BY MR. ROGACZEWSKI:

5 Q You have in front of you what's been
6 marked as Exhibit 17 which is a 1988 methodology
7 for valuation of accident and health plans under
8 Section 89 of the Internal Revenue Code. You
9 produced it at numbers 861 through 899.

10 Are you familiar with this document?

11 A Yes.

12 Q In fact, I think you used this document
13 or its methodology to calculate the relative value
14 of the 1990 plan; correct?

15 A This was used as part of that, yes.

16 Q All right. On page 1 it says that,
17 quote, The value for a specific plan is based
18 entirely on its provisions, unquote.

19 Do you agree with that?

20 MS. BRAULT: That that's how the -- a
21 valuation is done under this protocol?

22 BY MR. ROGACZEWSKI:

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1 Q That's a statement in the methodology:
2 The value for a specific plan is based entirely on
3 its provisions.

4 Is that -- do you agree with that?

5 MS. BRAULT: I'm trying to understand
6 your question. Are you asking if in a normative
7 way a valuation is supposed to include that, or
8 are you just saying that that's what it says in
9 this document?

10 MR. ROGACZEWSKI: I think my question
11 was sufficiently clear.

12 BY MR. ROGACZEWSKI:

13 Q I'll take the answer.

14 A I mean, when we are simply looking at
15 Health Plan A versus Health Plan B, then, you
16 know -- and -- and in just determining not the
17 cost of the plan based on usage or anything else
18 but just on the benefits provided in one plan
19 versus another, that's what this is used for.

20 Q And then it goes on, The value is
21 independent of the geographic location and
22 demographic characteristics of employees.

37 (Pages 142 to 145)

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<p style="text-align: right;">Page 146</p> <p>1 Do you agree with that?</p> <p>2 MS. BRAULT: I -- I'm -- I'm sorry. I</p> <p>3 have to object to form. I really don't understand</p> <p>4 your question. Are you asking if this methodology</p> <p>5 is -- is stating that as the boundaries of the</p> <p>6 methodology, or are you asking him if all</p> <p>7 valuations --</p> <p>8 BY MR. ROGACZEWSKI:</p> <p>9 Q I'll take the answer.</p> <p>10 MS. BRAULT: I don't understand the</p> <p>11 question.</p> <p>12 BY MR. ROGACZEWSKI:</p> <p>13 Q I'll take the answer.</p> <p>14 MS. BRAULT: I would like to understand</p> <p>15 the question, please.</p> <p>16 BY MR. ROGACZEWSKI:</p> <p>17 Q I'll take the answer.</p> <p>18 MS. BRAULT: Do you understand the</p> <p>19 question?</p> <p>20 THE WITNESS: I'm kind of confused by</p> <p>21 the question.</p> <p>22 BY MR. ROGACZEWSKI:</p>	<p style="text-align: right;">Page 148</p> <p>1 things, I think you can't ignore that there were</p> <p>2 pension improvements, improvements to Medicare</p> <p>3 Part B reimbursement. There was a -- a savings</p> <p>4 account that was set up. I mean, all of those</p> <p>5 things -- what -- what I'm saying is there might</p> <p>6 be other things besides one plan versus another.</p> <p>7 Q Does the valuation methodology in</p> <p>8 Exhibit 17 take those things into account?</p> <p>9 A I -- when I use this, I looked at the</p> <p>10 plan design.</p> <p>11 Q The terms of the health care plan?</p> <p>12 A Just comparing the -- the '90 and the</p> <p>13 '98, in that narrow focus, I used this comparing</p> <p>14 the plan provisions.</p> <p>15 Q And you could do the same comparison</p> <p>16 between the current plan and the proposed plan;</p> <p>17 correct?</p> <p>18 A I could.</p> <p>19 Q And the valuation would be the same,</p> <p>20 wouldn't it?</p> <p>21 A The same as what?</p> <p>22 Q Between the current and the proposed</p>
<p style="text-align: right;">Page 147</p> <p>1 Q There's a statement, The value of a</p> <p>2 plan is independent of the geographic location and</p> <p>3 demographic characteristics of employees, the</p> <p>4 actual health care utilization by plan</p> <p>5 participants and the type of plan under which the</p> <p>6 benefits are provided.</p> <p>7 Do you agree with that statement?</p> <p>8 MS. BRAULT: That that's what it says</p> <p>9 here?</p> <p>10 BY MR. ROGACZEWSKI:</p> <p>11 Q Do you agree with that statement?</p> <p>12 A If you're just comparing one plan to</p> <p>13 another and that's all you're looking at, yes.</p> <p>14 Q And isn't that what we're doing in this</p> <p>15 case?</p> <p>16 A Well, we're -- in the context of</p> <p>17 comparing what CNH is proposing to -- to put in</p> <p>18 for -- for this plaintiff class versus what it has</p> <p>19 already done for others, there are other things --</p> <p>20 there are other benefits outside of the plan that</p> <p>21 were provided.</p> <p>22 If you're going to compare those two</p>	<p style="text-align: right;">Page 149</p> <p>1 plan.</p> <p>2 A It would be a different value.</p> <p>3 Q How? I'm sorry. The proposed plan and</p> <p>4 the 2005 plan, you could compare those two plans,</p> <p>5 couldn't you?</p> <p>6 A Yes.</p> <p>7 Q And the valuation would be the same,</p> <p>8 wouldn't it?</p> <p>9 A For the -- the -- for the medical plan</p> <p>10 or the drug plan, yes.</p> <p>11 Q Which is what Exhibit 17 is all about,</p> <p>12 the plan value; correct?</p> <p>13 MS. BRAULT: I'm going to place an</p> <p>14 objection.</p> <p>15 THE WITNESS: It's part of -- it's part</p> <p>16 of looking at it. It's not the whole thing.</p> <p>17 There are other benefits besides what this values.</p> <p>18 This is just valuing the medical or the</p> <p>19 prescription benefits.</p> <p>20 BY MR. ROGACZEWSKI:</p> <p>21 Q And when the court -- if the court is</p> <p>22 asking us to compare the -- whether or not the</p>

38 (Pages 146 to 149)

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1 **medical benefits are roughly consistent or**
 2 **reasonably commensurate --**
 3 A With --
 4 Q -- why isn't --
 5 MS. BRAULT: Wait.
 6 THE WITNESS: With --
 7 BY MR. ROGACZEWSKI:
 8 Q -- why isn't --
 9 MS. BRAULT: Wait.
 10 BY MR. ROGACZEWSKI:
 11 Q -- this sufficient?
 12 MS. BRAULT: I'm going to place an
 13 objection. It's argumentative, and it's certainly
 14 not what the court asked us to look at, and I
 15 object.
 16 BY MR. ROGACZEWSKI:
 17 Q I'll take the answer.
 18 MS. BRAULT: Form and foundation.
 19 BY MR. ROGACZEWSKI:
 20 Q I'll take the answer.
 21 A As I understand it, the court is
 22 looking at the comparison between the plan that

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1 this class of retirees has now, which is not the
 2 2005 plan, comparing that to the proposed plan.
 3 Those are very different plans, so I'm --
 4 Q You don't --
 5 A -- confused about what you're asking.
 6 Q You don't understand that one of the
 7 factors is whether or not the proposed plan is
 8 roughly consistent to what's provided to CNH's
 9 current employees?
 10 A Is -- would the class of plaintiffs
 11 here get everything that was provided to those
 12 people? No.
 13 So it's not consistent. They were
 14 given other things that were part of a
 15 negotiation, as I understand it.
 16 Q That are not health benefits?
 17 A Right.
 18 MS. BRAULT: Well --
 19 BY MR. ROGACZEWSKI:
 20 Q Okay. Let's talk about AT&T --
 21 MS. BRAULT: I'm going to place an
 22 objection to the last question to the extent it's

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1 overly broad and undefined.
 2 BY MR. ROGACZEWSKI:
 3 Q How did you acquire information about
 4 AT&T and Lucent's plans?
 5 A I received documents from counsel.
 6 Q Okay. What did you ask for to -- that
 7 resulted in getting these documents?
 8 A Information that would -- that would
 9 provide me some -- some insight into what happened
 10 with those companies and their negotiations or --
 11 or results from court proceedings that -- that
 12 might shed a different light than what Mr. Macey
 13 was saying.
 14 Q You don't identify anything Mr. Macey
 15 says about AT&T or Lucent that is factually
 16 incorrect; right?
 17 A I don't think so, but I think he left
 18 some things out.
 19 Q I understand that, but I want to be
 20 clear that you're not identifying anything that he
 21 said that was factually incorrect.
 22 A (Witness reviews document.) I -- I

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1 don't think so.
 2 Q Now, AT&T is a cap situation; correct?
 3 A Yeah, as I -- as I understand it, there
 4 were caps in place for many years.
 5 Q And the caps impose, once the cap is
 6 reached, 100 percent of the increased cost on
 7 participants; correct?
 8 A That's my understanding.
 9 Q That's more severe than what the
 10 proposed plan does, isn't it?
 11 A It is, but those caps were agreed upon
 12 by the parties. And, as I understand it, once
 13 there were issues with reaching the cap, some
 14 additional money, significant money was put into a
 15 VEBA to help offset that.
 16 Q My question was a little different, and
 17 it's really whether or not a plan that imposes
 18 100 percent of the costs, by its terms, on
 19 participants is less severe than a plan that
 20 imposes only 60 percent of the increased costs?
 21 MS. BRAULT: Only 60 percent of the
 22 increased costs?

39 (Pages 150 to 153)

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1 THE WITNESS: Well, again, you can't
2 just look at that piece as if that's the only
3 thing that happened. I mean, I don't see how you
4 can ignore the VEBA money which helps take it from
5 100 percent to something different.

6 BY MR. ROGACZEWSKI:

7 Q VEBA is not a health benefit, though,
8 is it?

9 A No, but it was put there precisely
10 because it was becoming hard for these folks to --
11 to afford the amount over the cap. I mean,
12 that's -- that's my understanding. So it seems
13 like they should be taken together. They're
14 not -- they're not completely disconnected events,
15 in my opinion.

16 Q Let's talk about Goodyear. How did you
17 acquire information about the Goodyear plans?

18 A Again, I -- I asked counsel for
19 documents they had that would -- that would relate
20 to what happened with their retiree health care.

21 Q When you got the documents about AT&T
22 and Lucent, did you after reviewing them ask for

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1 additional information about AT&T and Lucent?

2 A I honestly don't recall whether it came
3 in pieces.

4 Q What about with -- so what you know
5 about AT&T and Lucent comes entirely from
6 information provided by plaintiffs' counsel?

7 A Yes.

8 Q You didn't conduct any independent
9 research?

10 A The information I got seemed pretty
11 clear about what happened.

12 Q You didn't ask any questions about it?

13 A I don't recall.

14 Q Okay. And with Goodyear, the
15 information that you know about Goodyear also
16 comes just from plaintiffs' counsel?

17 MS. BRAULT: Could I just place just
18 the objection and as a clarification that when you
19 talk about, quote, the information that came from
20 plaintiffs' counsel, end quote, you're talking
21 about documents that came from plaintiffs' counsel
22 which have been produced?

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1 BY MR. ROGACZEWSKI:

2 Q I'll take the answer.

3 A Yes, it was the documents from
4 plaintiffs' counsel.

5 Q And did you ask any questions after
6 receiving those documents?

7 A I mean, I had conversations with
8 counsel.

9 Q I'm not -- I'm not --

10 A Okay.

11 Q -- I'm not trying to ask about those
12 conversations. I'm just merely trying to
13 understand the degree to which you accepted the
14 information without question.

15 A Well, I accepted the documents were --
16 were correct. I mean, there may have been
17 conversations we had where I was attempting to get
18 clarification to the extent that, you know,
19 counsel was able to provide. I don't remember
20 specific questions.

21 Q And as with AT&T and Lucent, you're not
22 saying Mr. Macey is factually wrong about what

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1 happened with Goodyear; correct?

2 A I -- I don't believe that I saw
3 anything factually wrong.

4 Q And you didn't conduct any independent
5 research about Goodyear; correct?

6 A I -- I think the documents seemed to --
7 to provide me what I need.

8 Q Okay. Goodyear is another cap
9 situation; correct?

10 A Yes.

11 Q And in the absence in -- in the absence
12 of a funding vehicle, the caps would have resulted
13 in significant premiums; correct?

14 A Yes.

15 Q And in both Goodyear and AT&T and
16 Lucent, the timing is such that the caps were
17 agreed to and then subsequently the VEBA was
18 agreed to; correct?

19 A That's my understanding.

20 Q So the caps were agreed to without a
21 funding vehicle in place; correct?

22 A It's my understanding that -- yes, but

40 (Pages 154 to 157)

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1 then when there were issues with exceeding the
2 caps, then -- then that led to a funding vehicle
3 to -- to fix the situation.

4 **Q Right. You don't disagree that the**
5 **caps were agreed to in the absence of a funding**
6 **vehicle?**

7 **A No, I don't disagree.**

8 **Q Okay. Let's talk about U.S. Steel.**
9 **How did you acquire information about the U.S.**
10 **Steel agreements?**

11 **A It was -- it's the same answer as the**
12 **others. I -- I received documents from**
13 **plaintiffs' counsel.**

14 **Q Okay. Did you ask for additional**
15 **information after receiving the documents?**

16 **A I don't recall that I did.**

17 **Q Did you conduct any independent**
18 **research about U.S. Steel?**

19 **A (Witness reviews document.) I do not**
20 **believe I did.**

21 **Q You don't identify anything that**
22 **Mr. Macey says that is wrong about the U.S. Steel**

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1 **situation -- that is factually incorrect; correct?**

2 **MS. BRAULT: The record should reflect**
3 **that we're not looking at Mr. Macey's report.**

4 **THE WITNESS: Yeah, I -- I don't --**

5 **MR. ROGACZEWSKI: No, we're looking at**
6 **Mr. Lynne's rebuttal report.**

7 **THE WITNESS: No, I don't think there**
8 **was any -- anything factually incorrect that I**
9 **found, but, again, it's the same issue of leaving**
10 **the sort of selective analysis.**

11 **BY MR. ROGACZEWSKI:**

12 **Q At the bottom of page 4, there's a**
13 **quote from the 1975 agreement about pensioners and**
14 **receiving a -- an individual receiving a surviving**
15 **spouse's benefits.**

16 **Do you see that?**

17 **A Yes.**

18 **Q How did you come across that language?**

19 **A It was in a document provided by**
20 **counsel.**

21 **Q Now, that provision standing alone has**
22 **nothing to do with health care benefits; correct?**

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1 **A Well, it talks about how changes can be**
2 **made to health care benefits.**

3 **Q And you understand that there is no**
4 **similar provision in the CNH provision; correct?**

5 **A Well, I think that's sort of the point.**

6 **Q And you understand that the Sixth**
7 **Circuit has held that changes can be made**
8 **unilaterally by the company; correct?**

9 **MS. BRAULT: Well, let me place an**
10 **objection to that's overly broad and ambiguous.**

11 **THE WITNESS: Not just willy-nilly,**
12 **they can't.**

13 **BY MR. ROGACZEWSKI:**

14 **Q What do you mean?**

15 **A Well, they can't make any change they**
16 **want.**

17 **Q Right. As long as it satisfies the**
18 **Reese standard; correct?**

19 **A Right.**

20 **Q So the fact that an agreement had a**
21 **limitation that CNH's doesn't have isn't really**
22 **relevant, is it?**

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1 **A Well, what I was trying to do here was**
2 **to say that Mr. Macey uses some of these**
3 **comparisons, but in each case there's some things**
4 **that are different about these other situations,**
5 **namely, that caps -- caps are in place in -- in a**
6 **number of these.**

7 **With CNH, my understanding was the caps**
8 **were negotiated out. And, you know, other --**
9 **other of these situations, there were agreements**
10 **reached, and in this case there's been no**
11 **agreement reached.**

12 **So I thought that his examples -- you**
13 **know, there were things that were different, and**
14 **it would -- couldn't just say that because of**
15 **this, then that.**

16 **Q Aren't there always going to be**
17 **differences when comparing situation A to**
18 **situation B?**

19 **A Yeah, but these are pretty big**
20 **differences.**

21 **(Lynne Deposition Exhibit 18 was marked**
22 **for identification and attached to the**

41 (Pages 158 to 161)

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MARK L. LYNNE - 1/17/2014

<p style="text-align: right;">Page 162</p> <p>1 transcript.)</p> <p>2 BY MR. ROGACZEWSKI:</p> <p>3 Q You have in front of you what's been</p> <p>4 marked as Exhibit 18, which appears to me to be</p> <p>5 the equivalent of what the UAW would call a</p> <p>6 highlighter of a -- of a 2012 agreement between</p> <p>7 the steelworkers and U.S. Steel.</p> <p>8 I'll represent to you that this was</p> <p>9 produced by you. The documents as we got them</p> <p>10 didn't have production numbers. I -- I -- I --</p> <p>11 that -- but I -- I'm not complaining, but that's</p> <p>12 why it doesn't have one, but I wanted to represent</p> <p>13 that you did -- it's my belief that you produced</p> <p>14 this document.</p> <p>15 A Yes.</p> <p>16 Q Do you recall reviewing this document?</p> <p>17 A Yes.</p> <p>18 Q Actually, look at page 10 where it has</p> <p>19 the participant premium. It looks to me like the</p> <p>20 premiums were going to be \$150 a month for</p> <p>21 pre-Medicare eligible and 75 a month for Medicare</p> <p>22 eligible.</p>	<p style="text-align: right;">Page 164</p> <p>1 A No.</p> <p>2 Q How did you acquire the information</p> <p>3 that's in the rebuttal report about Ford?</p> <p>4 A They were reports that I received from</p> <p>5 counsel.</p> <p>6 Q Did you --</p> <p>7 A Or documents I received.</p> <p>8 Q Did you do any independent research</p> <p>9 about Ford?</p> <p>10 A No.</p> <p>11 Q Did you react or -- after reviewing the</p> <p>12 documents provided by plaintiffs' counsel, did you</p> <p>13 ask for additional information?</p> <p>14 A I may have gotten Francis' report after</p> <p>15 reviewing the initial information.</p> <p>16 Q Did you ask for Francis' report?</p> <p>17 You're talking about Theo Francis; correct?</p> <p>18 A Yes.</p> <p>19 Q Did you ask for Mr. Francis' report?</p> <p>20 A Yes.</p> <p>21 Q Specifically?</p> <p>22 A Well, about the financial condition of</p>
<p style="text-align: right;">Page 163</p> <p>1 Do you agree with that?</p> <p>2 A Yes.</p> <p>3 Q And CNH's proposed plan starts at 57</p> <p>4 for pre-Medicare and 5 for Medicare; correct?</p> <p>5 A Sounds correct.</p> <p>6 Q Both of those are less than what's in</p> <p>7 the U.S. Steel plan; correct?</p> <p>8 A Yes.</p> <p>9 Q And let's look at a couple of pages</p> <p>10 earlier, on page 8, at the plan design. The</p> <p>11 in-network co-insurance rate is also higher under</p> <p>12 the CNH proposed plan, isn't it?</p> <p>13 A Eighty-five.</p> <p>14 Q And the out-of-pocket maximum of the</p> <p>15 proposed plan provides a greater degree of</p> <p>16 protection for participants than the U.S. Steel</p> <p>17 plan; correct?</p> <p>18 A I believe it has a lower out-of-pocket,</p> <p>19 yes.</p> <p>20 Q Let's talk about Ford. And I -- let me</p> <p>21 go back and ask this before. Have you conducted</p> <p>22 any independent research about U.S. Steel?</p>	<p style="text-align: right;">Page 165</p> <p>1 one versus the other.</p> <p>2 Q When did you become aware that</p> <p>3 Mr. Francis was one of plaintiffs' experts?</p> <p>4 A I don't recall.</p> <p>5 Q And did you know Mr. Francis was an</p> <p>6 expert when you asked for his report?</p> <p>7 A Well, I didn't know Mr. Francis.</p> <p>8 Q So you asked --</p> <p>9 A I was --</p> <p>10 Q I'm trying --</p> <p>11 A I was asking for information about --</p> <p>12 because Mr. Macey was trying to compare the</p> <p>13 automobile companies, which basically were</p> <p>14 bankrupt. They were on it as comparisons. So I</p> <p>15 wanted to understand what I could about CNH's</p> <p>16 financial position.</p> <p>17 Q Now -- and what you got in response to</p> <p>18 that was Mr. Francis' report?</p> <p>19 A Yes.</p> <p>20 Q Now, again, you're not identifying</p> <p>21 anything factually incorrect in Mr. Macey's report</p> <p>22 about Ford; right?</p>

42 (Pages 162 to 165)

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1 A No, just leaving out.
 2 Q In fact, both Ford and GM agreed with
 3 UAW to reduce retiree health benefits; right?
 4 A It's my understanding they did. I'm
 5 not sure what choice they had.
 6 Q They -- but they -- they agreed to
 7 them; correct?
 8 A In a bankruptcy situation.
 9 Q It's your understanding that they -- as
 10 part of the bankruptcy, that's when the reductions
 11 occurred?
 12 A I'm sure there were many instances of
 13 negotiations as -- as these companies were having
 14 trouble.
 15 Q GM's bankruptcy was in 2009; correct?
 16 A I don't see that I have the date in
 17 here.
 18 Q Okay. Do you know when GM's bankruptcy
 19 occurred?
 20 A I don't know the exact date.
 21 (Lynne Deposition Exhibit 19 was marked
 22 for identification and attached to the

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1 transcript.)
 2 BY MR. ROGACZEWSKI:
 3 Q All right. You have in front of you,
 4 Mr. Lynne, a filing made in a court case called,
 5 In re: General Motors Corp., pending in the United
 6 States Bankruptcy Court for the Southern District
 7 of New York, Case Number 09-50026.
 8 I'll represent this was also produced
 9 by you.
 10 Do you recall reviewing this document?
 11 A (Witness reviews document.) I don't
 12 recall -- recall receiving this; I don't recall
 13 that I relied on it.
 14 Q Okay. Do you recall reviewing it?
 15 A If I did, it was fairly cursory.
 16 Q I can't imagine why. It's mind
 17 numbing, having read it.
 18 Does it refresh your recollection
 19 regarding when the GM bankruptcy occurred?
 20 A Looks like '09, yes.
 21 Q And do you have an understanding as to
 22 when GM and Ford first agreed to reductions in

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1 retiree health care benefits with the UAW?
 2 A No.
 3 (Lynne Deposition Exhibit 20 was marked
 4 for identification and attached to the
 5 transcript.)
 6 BY MR. ROGACZEWSKI:
 7 Q You have in front of you what's been
 8 marked as Exhibit 20 which is a -- a Lexis
 9 printout, a Web-based Lexis printout of a Court of
 10 Appeals decision, International Union (UAW) versus
 11 Ford Motor Company, from 2007.
 12 And I'll represent this was also
 13 produced by you.
 14 Do you recall reviewing this document?
 15 A I don't recall reviewing it in detail.
 16 Q Do you have a Lexis subscription,
 17 Mr. Lynne?
 18 A Not to my knowledge.
 19 Q Have you used Lexis before?
 20 A No.
 21 Q I'll direct you to the top of the
 22 fourth page of the document where the Court of

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1 Appeals says, quote, Ford also announced in early
 2 2005 that an intended -- it intended to cut
 3 retiree health care benefits. The UAW started
 4 negotiations with Ford, and Ford disclosed its
 5 confidential financial projections to the UAW.
 6 After the UAW's financial consultant concluded
 7 that Ford's prospects were at least as dire as the
 8 company insisted, UAW presented Ford with a
 9 package of proposed modest cuts to retiree health
 10 benefits, a package consistent with the framework
 11 it had negotiated with GM.
 12 Do you see that?
 13 A Yes.
 14 MS. BRAULT: Can you show it to me,
 15 just point it --
 16 MR. ROGACZEWSKI: It's the first full
 17 paragraph.
 18 MS. BRAULT: Oh, okay. All right.
 19 MR. ROGACZEWSKI: I apologize. I
 20 wasn't trying to --
 21 MS. BRAULT: I got it.
 22 BY MR. ROGACZEWSKI:

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<p style="text-align: right;">Page 170</p> <p>1 Q Is that consistent with your</p> <p>2 understanding as to the timing of events here?</p> <p>3 A I was aware that as these companies</p> <p>4 were, you know, getting into significant trouble,</p> <p>5 that there were -- there were agreements along the</p> <p>6 way, but they're agreements between parties with</p> <p>7 companies that are in very bad financial shape.</p> <p>8 I'm not sure where the relevance is to CNH.</p> <p>9 Q Now, we were talking about valuing</p> <p>10 plans before. The financial condition of the</p> <p>11 company doesn't go into the value of the plan, the</p> <p>12 calculation of the plan value; correct?</p> <p>13 A It doesn't go into that narrow plan</p> <p>14 calculation, no.</p> <p>15 Q And it's -- I mean, in -- but you</p> <p>16 consider it a relevant consideration; correct?</p> <p>17 A Well, I -- it's hard to ignore that --</p> <p>18 that those situations with Ford, GM and Chrysler</p> <p>19 are -- that that had something to do with it.</p> <p>20 Q And -- and how -- and -- and -- now,</p> <p>21 Ford eventually negotiated a VEBA with the UAW;</p> <p>22 correct?</p>	<p style="text-align: right;">Page 172</p> <p>1 the question that it exceeds the scope of what he</p> <p>2 was asked to do.</p> <p>3 But go ahead.</p> <p>4 THE WITNESS: I'm not sure I understand</p> <p>5 why a company in this kind of financial situation</p> <p>6 would need to make such drastic cuts.</p> <p>7 BY MR. ROGACZEWSKI:</p> <p>8 Q That wasn't my question. My question</p> <p>9 was in comparing the terms of the current plan and</p> <p>10 the proposed plan, whether they're reasonably</p> <p>11 commensurate, how is the financial state of the</p> <p>12 company relevant to that?</p> <p>13 MS. BRAULT: I'm going to place an</p> <p>14 objection. I think we already agreed the</p> <p>15 definition of reasonably commensurate is a legal</p> <p>16 question, and I object to the extent you're asking</p> <p>17 him to form a legal conclusion.</p> <p>18 THE WITNESS: I'm not sure I can answer</p> <p>19 that.</p> <p>20 BY MR. ROGACZEWSKI:</p> <p>21 Q You would agree, wouldn't you,</p> <p>22 Mr. Lynne, you could compare the plan terms pretty</p>
<p style="text-align: right;">Page 171</p> <p>1 A That's my understanding.</p> <p>2 Q Do you have an understanding as to when</p> <p>3 the VEBA came in time relative to the initial</p> <p>4 changes in 2005?</p> <p>5 A No.</p> <p>6 Q CNH's financial state has nothing to do</p> <p>7 with whether the proposed plan is reasonably</p> <p>8 commensurate with the current plan, does it?</p> <p>9 MS. BRAULT: I'll place an objection to</p> <p>10 form.</p> <p>11 THE WITNESS: I think in totality --</p> <p>12 if -- if you're trying to compare the auto</p> <p>13 companies to CNH, I'm saying it's a very different</p> <p>14 situation that produced the reductions at the auto</p> <p>15 companies from what's happening at CNH.</p> <p>16 BY MR. ROGACZEWSKI:</p> <p>17 Q My question was a little different.</p> <p>18 I'm asking how -- whether it's relevant to whether</p> <p>19 the -- the terms of the proposed plan are really</p> <p>20 commensurate with the current plan. I'm not</p> <p>21 talking about the auto companies' plan.</p> <p>22 MS. BRAULT: I object to the form of</p>	<p style="text-align: right;">Page 173</p> <p>1 easily without considering the financial state of</p> <p>2 the companies; right?</p> <p>3 A Yes, and we have done that.</p> <p>4 Q Right. In fact, you could take the</p> <p>5 benefit plan, redact the company's name on it and</p> <p>6 not even know it and compare the plan terms;</p> <p>7 right?</p> <p>8 A Yes.</p> <p>9 Q And you could identify them as being</p> <p>10 reasonably commensurate with each other or not;</p> <p>11 correct?</p> <p>12 MS. BRAULT: I'm going to pose an</p> <p>13 objection again to the legal conclusion of the</p> <p>14 comparison being reasonably commensurate of just</p> <p>15 on terms.</p> <p>16 THE WITNESS: What I was trying to do</p> <p>17 was rebut an argument that Macey was making trying</p> <p>18 to compare the CNH situation with these other</p> <p>19 companies, and I don't think that's an appropriate</p> <p>20 comparison.</p> <p>21 BY MR. ROGACZEWSKI:</p> <p>22 Q Do you think that -- so it's your</p>

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1 understanding that that goes to whether they're
2 reasonably commensurate or not?

3 A I guess so, yes.

4 Q Okay. And whether the changes in the
5 proposed plan are reasonable in light of changes
6 in health care, that has nothing to do with
7 whether or not CNH is in good or poor financial
8 condition; correct?

9 MS. BRAULT: I'm going to place an
10 objection. Again, I think you're asking him to
11 comment on the court's standard and not
12 necessarily what he was asked to review in this
13 case.

14 THE WITNESS: Can you restate?

15 BY MR. ROGACZEWSKI:

16 Q You would agree, wouldn't you, that in
17 looking at the changes that CNH is proposing and
18 evaluating whether they're reasonable in light of
19 the changes in health care, that the financial
20 condition of the company has nothing to do with
21 that?

22 MS. BRAULT: I object.

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1 THE WITNESS: You know, when I work
2 with my clients, the things that they need to do
3 are certainly dictated at some point by financial
4 conditions.

5 BY MR. ROGACZEWSKI:

6 Q That wasn't an answer to my question.
7 How -- I'll ask it -- I'll ask it in a nonleading
8 way.

9 How is the financial condition of CNH
10 relevant to whether the changes that one wants to
11 make are reasonable in light of changes in health
12 care?

13 A I wasn't trying to make that
14 comparison.

15 Q Okay.

16 A Macey was when comparing CNH to these
17 other companies.

18 Q That's what you under- --

19 A I was simply trying to rebut that part
20 of his argument.

21 Q And that's what you understood
22 Mr. Macey to be doing in that part of his report?

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1 A Trying to say that what happened at
2 these auto companies is something that could --
3 could happen at CNH, and that it was a good
4 comparison, which I disagree with.

5 Q How about GM? How did you acquire the
6 information in your rebuttal report regarding GM?

7 A (Witness reviews document.) That was a
8 combination of documents received from counsel,
9 and I believe that was where I looked -- looked up
10 the composition of the VEBA on the UAW Web site.

11 Q The UAW VEBA trust breakdown -- work
12 chart; right?

13 A Right.

14 Q And aside from that, did you do any
15 independent research into the GM situation?

16 A No.

17 Q And aside from the conflation of the
18 UAW VEBA trust with the UAW, did you identify
19 anything incorrect in Mr. Macey's report?

20 A Mr. Macey wasn't -- I don't believe he
21 was clear as to which of the auto companies he was
22 referring to, but he did say that -- he was

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1 attempting to say that the UAW made changes to
2 benefits; and, in fact, it was -- the trustees or
3 the administrators of the VEBA, which is
4 different.

5 Q I said aside from that.

6 A Oh, I'm sorry.

7 Q Aside from that.

8 A No.

9 Q But Mr. Macey isn't wrong about the
10 terms that the UAW retirees are -- that -- that --
11 the terms of their benefits under the UAW VEBA as
12 set by the UAW VEBA trust; correct?

13 A No, no.

14 Q And, so, with the exception of the
15 research, you did everything that's in your --
16 everything you understand about GM came from
17 plaintiffs' counsel; correct?

18 MS. BRAULT: You mean in documents from
19 plaintiffs' counsel?

20 THE WITNESS: Yes.

21 BY MR. ROGACZEWSKI:

22 Q And the same thing I'm saying would be

45 (Pages 174 to 177)

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MARK L. LYNNE - 1/17/2014

<p style="text-align: right;">Page 178</p> <p>1 true for Ford; correct?</p> <p>2 A Yes.</p> <p>3 Q Now, you make a -- a big point about</p> <p>4 the connection of the Ford and the GM changes to</p> <p>5 bankruptcy; correct?</p> <p>6 A I think it makes the comparison. Not a</p> <p>7 very good one, yeah.</p> <p>8 Q GM's changes were made four years</p> <p>9 before it went into bankruptcy; correct?</p> <p>10 A It was all part of their -- I viewed it</p> <p>11 as a -- as all a part of the agreements that were</p> <p>12 made as the company was going down hill.</p> <p>13 Q So you look at -- you take together the</p> <p>14 '05 agreement, the '07 agreement and the</p> <p>15 bankruptcy and put them all together?</p> <p>16 A Yes.</p> <p>17 Q You understand, correct, that the VEBA</p> <p>18 that GM agreed to was not part of the original</p> <p>19 agreement; right? That -- that came second in</p> <p>20 time?</p> <p>21 MS. BRAULT: I'm going to place an</p> <p>22 objection: form.</p>	<p style="text-align: right;">Page 180</p> <p>1 Q You have in front of you what has been</p> <p>2 marked as Exhibit 21 which is a -- a -- I don't</p> <p>3 know if it's an article or a press release, but</p> <p>4 it's from the UAW's Web site. It's entitled, UAW,</p> <p>5 union retirees found proposed settlements</p> <p>6 establishing VEBA trust.</p> <p>7 Since it doesn't have a Bates number,</p> <p>8 I'll make sure the record is clear you did not</p> <p>9 produce this document.</p> <p>10 The first paragraph says, The UAW,</p> <p>11 along with UAW retirees, has filed a proposed</p> <p>12 settlement of health care claims against --</p> <p>13 against GM. If approved by the U.S. District</p> <p>14 Court, the settlement will establish an</p> <p>15 independent VEBA trust which will pay health</p> <p>16 benefits for current and future UAW GM retirees.</p> <p>17 Did I read that correctly?</p> <p>18 A Yes.</p> <p>19 Q Is that consistent with your</p> <p>20 understanding as to when the UAW GM VEBA was</p> <p>21 negotiated and then established?</p> <p>22 A Yes.</p>
<p style="text-align: right;">Page 179</p> <p>1 THE WITNESS: I mean, I'm not sure that</p> <p>2 to me the timing was as important as the fact that</p> <p>3 these things were done with companies that were in</p> <p>4 such dire financial straits.</p> <p>5 BY MR. ROGACZEWSKI:</p> <p>6 Q Well, I understand your -- your -- I</p> <p>7 understand your opinion on that. Now I'm thinking</p> <p>8 about it -- this question is focusing on something</p> <p>9 different, which is the connection of the funding</p> <p>10 vehicle to the benefit changes. And I think you</p> <p>11 said before that it was important that the funding</p> <p>12 vehicle -- although it's not a health benefit --</p> <p>13 was negotiated as -- as -- or changed at the same</p> <p>14 time as the health care change; is that correct?</p> <p>15 A That's my understanding.</p> <p>16 Q And in GM that wasn't the case;</p> <p>17 correct?</p> <p>18 A I'm not sure.</p> <p>19 (Lynne Deposition Exhibit 21 was marked</p> <p>20 for identification and attached to the</p> <p>21 transcript.)</p> <p>22 BY MR. ROGACZEWSKI:</p>	<p style="text-align: right;">Page 181</p> <p>1 Q Four paragraphs down the article says,</p> <p>2 A similar case was filed in 2005, and the UAW and</p> <p>3 GM agreed to modify health care benefits for</p> <p>4 retirees.</p> <p>5 Did I read that correctly?</p> <p>6 A Yes.</p> <p>7 Q Is that consistent with your</p> <p>8 understanding that the first agreement reduced</p> <p>9 changes -- reduced health care benefits and then</p> <p>10 two years later a subsequent agreement established</p> <p>11 the funding mechanism?</p> <p>12 A Yes.</p> <p>13 Q In the case of GM, the -- the funding</p> <p>14 mechanism was not part of the agreement that</p> <p>15 changed their health care benefits; correct?</p> <p>16 MS. BRAULT: I'm just going to place an</p> <p>17 objection to the extent that you're conflating</p> <p>18 events, and -- and I object to the form to the</p> <p>19 extent that you're assuming facts not in evidence,</p> <p>20 that -- that something occurs at -- at a specific</p> <p>21 point in time rather than over time.</p> <p>22 THE WITNESS: Again, the point I was</p>

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1 trying to make, Macey brings up these examples,
2 and these examples are -- in these other examples
3 there were agreements made or there was bankruptcy
4 or there were preexisting caps. With CNH, there
5 was no bankruptcy. There was no agreement. Caps
6 were negotiated out.

7 I'm just trying to say that I don't
8 think these comparisons -- he left out some things
9 in his comparisons that make them not good
10 comparisons.

11 We're trying to look at what the court
12 says needs to be done comparing it to other
13 situations. It's not a good comparison.

14 BY MR. ROGACZEWSKI:

15 **Q The court -- and we've talked about**
16 **already two of the three Reese factors. The third**
17 **one is whether the proposed plan is roughly**
18 **consistent with other plans.**

19 **Why -- how is the financial condition**
20 **of CNH relevant -- or the financial condition of**
21 **GM relevant to whether the terms or the benefit**
22 **plans are roughly consistent with each other?**

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1 A I -- I don't see how you can ignore a
2 company being bankrupt -- how you can ignore that
3 situation when you look at what had to be done
4 with the benefits.

5 **Q You can't compare the terms of Benefit**
6 **Plan A and Benefit Plan B without looking at the**
7 **financial condition of the companies?**

8 A If the financial condition is
9 relatively the same, you don't have to, but the
10 financial condition with these other companies had
11 a lot to do with what happened. I don't see how
12 that can be ignored.

13 **Q But all the things that you looked at**
14 **in your initial report -- participant's ability to**
15 **pay, the relative value of the plan, the costs**
16 **that are borne by the relative payors -- none of**
17 **those have anything to do with the financial**
18 **condition of the company, do they?**

19 A No, they don't.

20 **Q It wasn't something that you considered**
21 **in doing your initial expert report; correct?**

22 A No, but when the expert on the other

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1 side tries to make an argument for something, I'm
2 trying to understand whether that argument makes
3 sense and rebut it if it didn't make sense.

4 **Q You were able to fill the scope of your**
5 **engagement without reference to the finances of**
6 **the company; correct?**

7 A The initial scope, I suppose.

8 **Q Which was to evaluate the proposed plan**
9 **against -- against the standard for the court;**
10 **correct?**

11 MS. BRAULT: Let me place an objection.
12 I think that mischaracterizes previous testimony
13 about the scope of his report.

14 THE WITNESS: We analyzed the proposed
15 plan, and even without considering those other
16 things, it's pretty clear how bad it is.

17 BY MR. ROGACZEWSKI:

18 **Q You don't dispute that CNH and UAW**
19 **agreed to a health benefit plan in 2005 that is**
20 **designed like the proposed plan; correct?**

21 A Correct.

22 **Q You don't dispute that CNH and UAW**

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1 **agree to a premium structure in an escalator**
2 **clause that is similar to what is in the proposed**
3 **plan; correct?**

4 A Correct.

5 **Q You say it matters in your rebuttal**
6 **report that the benefit was vested; right?**

7 A That's what the court said.

8 **Q But you understand that the Sixth**
9 **Circuit has held in this case that, even though**
10 **it's vested, changes can be made; right?**

11 A I understand that.

12 MS. BRAULT: Let me just place an
13 objection to the extent you mischaracterized the
14 previous testimony, and it's not just -- I think
15 his response was willy-nilly changes.

16 BY MR. ROGACZEWSKI:

17 **Q I'm just focusing on the fact the**
18 **rebuttal report makes the point the benefits were**
19 **vested. If the court says the benefits can be**
20 **changed even if they're vested, why does it matter**
21 **whether the benefits were vested in these other**
22 **cases or not?**

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1 MS. BRAULT: I'm going to place an
2 objection. I think you're mischaracterizing the
3 decision of the court which is indicative of a
4 question that's really asking for a legal
5 conclusion, and I don't think that Mr. Lynne's
6 prepared to talk about what reasonable means and
7 what kind of changes can be made and whether or
8 not vesting as a legal definition is encompassing
9 the kind of changes that you're asking about in an
10 ambiguous kind of way.
11 Having said that --
12 MR. ROGACZEWSKI: And I'll -- I'll ask
13 Ms. Brault to refrain from speaking objections.
14 MS. BRAULT: Having said that, I think
15 that his answer can be taken with an understanding
16 that he's answering the -- the question
17 (inaudible) with no position on the definitions.
18 BY MR. ROGACZEWSKI:
19 **Q I'll take the answer.**
20 A Can you restate the answer?
21 **Q If a court has held that CNH can make**
22 **changes even though the benefits are vested, why**

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1 **does it matter, as you say it does in your**
2 **rebuttal report, that the benefits are vested in**
3 **this case and not in those other cases?**
4 A Well, again, I was not a legal expert;
5 I was not hired to be a legal expert. But it
6 seems to me that if the court -- courts have made
7 a point that these benefits are vested, that --
8 that you need to take much more care in making any
9 changes to these than you would with benefits that
10 are not vested; that you have much less leeway to
11 make changes if they're vested.
12 **Q Do you have an understanding as to**
13 **whether the parties in these other circumstances**
14 **that you describe and got your information**
15 **entirely from plaintiffs' counsel -- as to**
16 **whether -- what the positions of the parties were**
17 **in those cases on whether the benefits were vested**
18 **or not?**
19 MS. BRAULT: Objection to form. Also
20 again the correction that information from
21 plaintiffs' counsel included documents only that
22 were provided to him.

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1 THE WITNESS: I don't know.
2 BY MR. ROGACZEWSKI:
3 **Q So you don't know if one side in those**
4 **cases thought the benefits were vested or not, do**
5 **you?**
6 A I don't know about either side, but
7 it's my understanding that no court has said those
8 benefits were vested for any of those other
9 situations.
10 **Q Would it matter if in each of those**
11 **cases the employer thought the benefits were not**
12 **vested and the representatives of the employees**
13 **thought they were?**
14 A Probably not because the court hadn't
15 made a decision on that.
16 **Q Even though that's the position of the**
17 **parties in this case; correct?**
18 MS. BRAULT: Well, I'm sorry. There
19 has been a court decision indicating that the --
20 MR. ROGACZEWSKI: I didn't say that. I
21 said the positions of the parties.
22 MS. BRAULT: Well, the -- go ahead.

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1 THE WITNESS: I would imagine those
2 would always be the positions of the parties, but
3 in this case a court has said something more.
4 BY MR. ROGACZEWSKI:
5 **Q But you don't -- okay.**
6 **You also state that the UAW refused to**
7 **discuss these changes with CNH; correct?**
8 A That is my understanding.
9 **Q But the UAW not only discussed the**
10 **changes; in fact, agreed to them for future**
11 **retirees; correct?**
12 A Not for the plaintiff class. That's
13 what I'm referring to.
14 **Q Right. But it did discuss them and**
15 **agree to them for future retirees; correct?**
16 A There's a lot of other things thrown
17 in.
18 **Q And agreed to these health benefits;**
19 **correct?**
20 A There are a lot of other things thrown
21 in.
22 **Q Things that weren't health benefits;**

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1 correct?

2 MS. BRAULT: I'm going to place an
3 objection to your definition of health benefits.

4 THE WITNESS: Well, you don't think a
5 Medicare Part B or D increased reimbursement is a
6 health benefit?

7 BY MR. ROGACZEWSKI:

8 Q Are you aware as to in what agreement
9 that amount is required to be paid?

10 A In the 2005 agreement.

11 Q Do you know what specifically in that
12 agreement?

13 A I'm not -- between --

14 Q Is it in the group benefit plan?

15 MS. BRAULT: You should let him finish
16 his answers before you start a question.

17 THE WITNESS: I had a copy of what I
18 took to be an agreement between the parties and it
19 had that in there.

20 BY MR. ROGACZEWSKI:

21 Q Do you have an understanding as to
22 whether it's in the pension plan or not?

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1 A No, I don't.

2 Q You understand, regardless, the Sixth
3 Circuit has said that CNH can make changes
4 irrespective of the UAW's agreement; correct?

5 A I think you're twisting my words, but
6 the -- what I'm saying is how can you compare an
7 agreement -- how can you say that an agreement
8 that was made with these benefits but with a
9 number of other things thrown in as sweeteners,
10 I'll call it -- how can you say that is the same
11 as trying to force down the throat those benefits
12 of those people without the sweeteners? It's not
13 the same.

14 Q The plan valuation is the same;
15 correct?

16 A Gees. You can't just look at the plan
17 valuation. There were other things involved. You
18 can't just, like, isolate little pieces, in my
19 opinion, without looking at all they got.

20 Q I can't isolate the health care plan?

21 A Not when you're trying to determine
22 whether they're -- they're reasonably the same.

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1 Q Not when determining whether or not the
2 health benefits are roughly consistent?

3 A Because other things were negotiated as
4 part of it, and the health benefits, if it had
5 just been that, there's no way they would have
6 agreed to those things without these other things.
7 You can't look at them --

8 Q How do you --

9 A -- in a vacuum.

10 Q -- know that?

11 A Well, they didn't agree to it without
12 those other things in there, so why would they
13 have done it without them.

14 Q But if you're just looking at the
15 health benefits, they're the same, aren't they?

16 MS. BRAULT: I'm going to place an
17 objection to your continued use of the word
18 "health benefits" because I think you're using a
19 narrower definition than is common practice.

20 THE WITNESS: You could say that some
21 of the other things that were provided in the 2005
22 agreement were health benefits: Part B

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1 reimbursement, the reimbursement account. And the
2 plaintiff class, that's not part of what they're
3 being offered, so those things are different.

4 BY MR. ROGACZEWSKI:

5 Q Thank you.

6 MR. ROGACZEWSKI: Could I take five
7 minutes?

8 MS. BRAULT: Sure.

9 (Recess -- 1:44 p.m.)

10 (After recess -- 1:58 p.m.)

11 MR. ROGACZEWSKI: I have concluded what
12 I came prepared to do.

13 MS. BRAULT: Okay. I do not have any
14 questions, so we're done.

15 THE COURT REPORTER: Read and sign?

16 MR. ROGACZEWSKI: Yes.

17
18
19 (Signature having not been waived, the
20 Deposition of MARK L. LYNNE ended at 1:58 p.m.)

21

22

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MARK L. LYNNE - 1/17/2014

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2 I, Mark L. Lynne, do hereby acknowledge	2 IN RE: JACK REESE, et al. v. CNH GLOBAL N.V. AND
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4 testimony, and the same is a true, correct and	4 RETURN BY: _____
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13 outcome.	13 _____
14 IN WITNESS WHEREOF, I have hereunto set	14 _____
15 my hand and affixed my notarial seal this 24th day	15 _____
16 of January 2014.	16 _____
17 My Commission expires:	17 _____
18 May 17, 2017	18 _____
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20 _____	20 _____
21 NOTARY PUBLIC IN AND FOR THE	21 _____
22 STATE OF MARYLAND	22 (DATE) (SIGNATURE)

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